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REVISED STATUTES

OF

THE STATE OF ARKANSAS.

REVISED STATUTES

OF

THE STATE OF ARKANSAS,

ADOPTED

AT THE OCTOBER SESSION

OF THE

GENERAL ASSEMBLY OF SAID STATE, A. D. 1837,

IN THE YEAR OF OUR INDEPENDENCE THE SIXTYSECOND, AND OF THE STATE THE SECOND YEAR.

REVISED BY WILLIAM McK. BALL AND SAM. C. ROANE

NOTES AND INDEX BY ALBERT PIKE.

PUBLISHED BY AUTHORITY OF THE GENERAL ASSEMBLY.

BOSTON:

WEEKS, JORDAN AND COMPANY, PUBLISHERS.

1838.

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PREFACE.

THE authority under which the Revisors acted in preparing the present code of Laws, is found in the following extract from a statute approved October 6, 1836:

"That the governor shall appoint, by and with the advice and consent of the senate, two competent persons to revise and arrange the statute laws of this State, and prepare such a code of civil and criminal laws as, in their opinion, may be necessary for the government of this State, in accordance with the constitution; and the persons so appointed shall make their report at the next session of the General Assembly, whether it be a regular or called session."

In compliance with this statute, as also with the requisitions of the constitution, SAM. C. ROANE and WILLIAM McK. BALL, Esquires, were appointed by the governor, at the session of 1836, by and with the advice and consent of the senate, to revise and arrange the statute laws of the State, and prepare a code of civil and criminal law by which its people should thereafter be governed. In pursuance of that appointment, those gentlemen proceeded to the performance of the duties assigned them, and the result of their labors was presented to the General Assembly of the State, at the October session, 1837. The statutes so

revised and presented, were referred to appropriate committees, reported to one or the other house, and passed separately, and with such amendments as seemed proper.

Thus far the editor had nothing to do with the following work. His duties, as imposed upon him by law, have been only to prepare the notes and index, and superintend the printing. He would therefore be turning far aside, were he to express any opinion as to the merits or intrinsic value of the work. Yet he may be excused for saying that in no State was ever such a revision more imperatively called for, more needful for the common weal. Taking the organic law as the basis of legislation, the legislative bodies of Missouri and Arkansas Territories had erected, at different times, and under the direction of divers architects, an unseemly and incongruous superstructure thereon; composed of statutes, enacted in part by the legislature of each Territory, in part by the legislature of the Louisiana Territory, and in part by the governor and judges of Arkansas territory. The whole edifice, erected in such manner, and under the auspices of legislation so conflicting and inartificial, resembled some of those old baronial castles, still extant in England, where the Gothic mingles with the Corinthian, the Doric with the Chinese style of architecture, as different ages have added different portions to the heterogeneous structure.

The labors and duties of the editor, marked out as they were by law, could not well be mistaken or transcended. Yet under the latitude given him, he has been sometimes forced to act as reviser, and in some instances, as in the militia law, to alter and re-arrange. Of this, however, it is not necessary here to speak, because these alterations

have generally become necessary, either on account of changes and amendments made by the legislature; because the statutes in which they were needed had not come within the scope of the revisors, or in order to express more clearly what was manifestly the sense and intention, though couched in ambiguous terms and doubtful language. The more is it unnecessary here to enlarge upon this, because these amendments and corrections will be more fully mentioned in the editor's report to the legislature, accompanied with a recommendation that they by law adopt the statutes, *as printed*, as the law of the land.

How far the editor has performed his duty, the people of the State will judge, and on that point he has nothing further to say. The index has been found a work of far greater magnitude and difficulty than anticipated, and may therefore, although very full, be yet found incomplete. If so, his inexperience in such matters must be his apology.

There is but one other suggestion which he feels called on to make, and but for making that, this preface might not have been written. Change and innovation in the law is generally a great evil, and every alteration in existing statutes should be made slowly, cautiously, and with due deliberation. It is sometimes better to abide by a law manifestly unjust, unequal, and unfounded in reason, than, by altering it, to unsettle rules of practice and titles to property.

In the English parliament, when any important law is proposed, which may affect in any considerable degree the titles to real estate, or the practice of the courts, it is submitted to all the eminent judges and lawyers in the realm for their opinion of its expediency, and years often elapse

before it is finally enacted. Very recently a law was under discussion there which had been so submitted, and although it had been before the house for some years, it was still not passed, because eminent lawyers disagreed as to its probable operation.

The consequence of this caution and deliberation is, that England has a uniform, consistent, settled system of statute law, the operation of which is known, and the people live quietly under it. Property is not disturbed nor litigation increased by legislation.

With us the case is different. Every representative of the people not only thinks himself competent to enact general laws, but is ambitious of the honor of originating them. The consequence is, a new brood of strange nondescripts, in the shape of statutes, at every session, keeping up a continual uncertainty and fluctuation in our systems of statute law. These remarks will apply to most, if not all the States. Crude and incongruous laws, hatched in prolific brains, and passed in haste and without consideration, load our statute books, confuse people, lawyers and judges, create litigation, and unsettle civil rights. Too much legislation is truly a curse. Hardly has the construction of one law been finally settled by the supreme court, at an expense to the litigants of thousands often, before another takes its place, more ambiguous perhaps in terms, and needing new adjudication before it can become a safe rule of action.

Laws become a thousand times more valuable, when expounded, and their true scope and construction finally settled by judicial interpretation. This can never happen, unless they are suffered to remain in force a sufficient time to be so expounded ; and only altered upon the suggestion

of those who make them their study — your judges, who are competent to inform you whether a statute is healthful or pernicious. There is not one legislator in twenty in any State in the Union, who can draft a statute of a general nature in such a manner that it will not cost hundreds, and perhaps thousands to have its true meaning and intent defined and settled; and therefore it is of the utmost importance that your statute law, when enacted, should be expounded by your high courts of judicature, and when so expounded, that it should continue to be the law, because then the people have learned its true meaning, and are possessed of fixed and certain rules by which to be governed — a consummation impossible without such exposition.

It is therefore most sincerely to be hoped that the present code will be suffered to remain without alteration, until it has received a full, fair and thorough investigation. Much litigation must of course arise under and out of it; and our supreme court will be daily occupied in its interpretation. It will receive close legal and judicial scrutiny. During that scrutiny its operations will be developed, and its faults discovered. If there are ambiguities, your judges will point them out. If they are unjust in any particular, they will be fully discussed, and their defects understood. If anything be wanting, it will be discovered. Should it then become necessary to make any change, it should be done after strict investigation into the defects of the old law, and the merits of the new. To that end it would be well if every general law were published at least one year before final action had upon it. By adopting such a course — by letting some years elapse before any alterations are made, by awaiting the adjudications of the supreme court, and

finally submitting every proposed alteration to the public, for the scrutiny of those who have made the law their study, we will have worked a great and beneficial revolution in the business of legislation — one which will be felt in a consistent and permanent system of laws, as well as in the saving of hundreds of thousands to the people, by the diminution of litigation consequent thereupon.

These views are briefly suggested here, because they are believed to be of incalculable importance to the people. Not from any desire in the editor to obtrude his peculiar tenets on the public, but because he felt it his duty to put them here in a permanent shape, and in a place where they might command attention and awaken reflection. Should they be disregarded, he can only hope that the evil consequences he apprehends, may not follow.

ALBERT PIKE.

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CONSTITUTION

OF

THE UNITED STATES.

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION I.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twentyfive years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, Nroth Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECTION III.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President

of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION IV.

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION VI.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No Senator or Representative shall during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emolument whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION VII.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the supreme court; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

11. To raise and support armies, but no appropriation of money, to that use, shall be for a longer term than two years;

12. To provide and maintain a navy;

13. To make rules for the government and regulation of the land and naval forces;

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service

of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress ;

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings ; — and,

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct tax shall be laid, unless in proportion to the census and enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another ; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them, shall without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION X.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

3. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate, shall in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes

shall be President, if such number be a majority of the whole number of Electors appointed ; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President ; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirtyfive years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation :

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my

ability, preserve, protect and defend the Constitution of the United States."

SECTION II.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them in respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION IV.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION II.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority;— to all cases affecting ambassadors, or public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party;— to controversies between two or more States;— between a State and citizens of another State; —between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State and the citizens thereof, and foreign States, citizens or subjects.*

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and

[*Amended, see art. 11.]

comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.

Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION IV.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provded, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

DONE in Convention, by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eightyseven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and deputy from Virginia.

NEW HAMPSHIRE.
JOHN LANGDON,
NICHOLAS GILMAN.

MASSACHUSETTS.
NATHANIEL GORHAM,
RUFUS KING.

CONNECTICUT.
WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

NEW YORK.
ALEXANDER HAMILTON.

NEW JERSEY.
WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATTERSON,
JONATHAN DRAYTON.

PENNSYLVANIA.
BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOVERNEUR MORRIS.

DELAWARE.
GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

MARYLAND.
JAMES M'HENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL.

VIRGINIA.
JOHN BLAIR,
JAMES MADISON, JR.

NORTH CAROLINA.
WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

SOUTH CAROLINA.
J. RUTLEDGE,
CHAS. COTESWORTH PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

GEORGIA.
WILLIAM FEW,
ABR. BALDWIN.

Attest,

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for any capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a

witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.

1. The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President: a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

CONSTITUTION

OF THE

STATE OF ARKANSAS.

We, the People of the Territory of Arkansas, by our Representatives in Convention assembled, at Little Rock, on Monday, the 4th day of January, A. D. 1836, and of the Independence of the United States the sixtieth year, having the right of admission into the Union as one of the United States of America, consistent with the Federal Constitution, and by virtue of the Treaty of Cession, by France to the United States, of the Province of Louisiana, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free and independent State, by the name and style of "*The State of Arkansas*," and do ordain and establish the following Constitution for the government thereof.

ARTICLE I.

OF BOUNDARIES.

We do declare and establish, ratify and confirm the following as the permanent boundaries of said State of Arkansas, that is to say: Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirtysix degrees north latitude; running from thence west with the said parallel of latitude to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the south-west corner of the State of Missouri; and from thence to be bounded

on the west, to the north bank of Red river, as by acts of Congress and treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the South side of Red river by the Mexican boundary line to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of said river to the thirtysixth degree of north latitude, the point of beginning.

ARTICLE II.

DECLARATION OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE:

SEC. 1. That all free men, when they form a social compact, are equal, and have certain inherent and indefeasible rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation; and of pursuing their own happiness.

SEC. 2. That all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an unqualified right to alter, reform or abolish their government, in such manner as they may think proper.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; and no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent: That no human authority can, in any case whatever, interfere with the rights of conscience; and that no preference shall ever be given to any religious establishment or mode of worship.

SEC. 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

SEC. 5. That all elections shall be free and equal.

SEC. 6. That the right of trial by jury shall remain inviolate.

SEC. 7. That printing presses shall be free to every person; and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject — being responsible for the abuse of that liberty.

SEC. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have the right to determine the law and the facts.

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby any officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty, and shall not be granted.

SEC. 10. That no free man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.

SEC. 11. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the crime shall have been committed; and shall not be compelled to give evidence against himself.

SEC. 12. That no person shall, for the same offence, be twice put in jeopardy of life or limb.

SEC. 13. That all penalties shall be reasonable, and proportioned to the nature of the offence.

SEC. 14. That no man shall be put to answer any criminal charge, but by presentment, indictment or impeachment.

SEC. 15. That no conviction shall work corruption of blood or forfeiture of estate.

SEC. 16. That all prisoners shall be bailable by sufficient securities, unless in capital offences, where the proof is evident or the presumption great: And the privilege of the writ of *habeas corpus* shall not be suspended, unless where, in case of rebellion or invasion, the public safety may require it.

SEC. 17. That excessive bail shall in no case be required, nor excessive fines imposed.

SEC. 18. That no *ex post facto* law, or law impairing the obligation of contracts, shall ever be made.

SEC. 19. That perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emolument, privileges or honors ever be granted or conferred in this State.

SEC. 20. That the citizens have a right in a peaceable manner to assemble together for their common good, to instruct their representatives, and to apply to those invested with the power of the government for redress of grievances, or other proper purposes, by address or remonstrance.

SEC. 21. That the free white men of this State shall have a right to keep and to bear arms for their common defence.

SEC. 22. That no soldier shall, in time of peace, be quartered in any house, without the consent of the ; owner nor, in time of war, but in a manner prescribed by law.

SEC. 23. The military shall be kept in strict subordination to the civil power.

SEC. 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and, to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that every thing in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III.

OF DEPARTMENTS.

SEC. 1. The powers of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

SEC. 2. No person, or collection of persons, being of one of those departments, shall exercise any power belonging to either of the others; except in the instances hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SEC. 1. The legislative power of this State shall be vested in a General Assembly, which shall consist of a Senate, and a House of Representatives.

QUALIFICATION OF ELECTORS.

SEC. 2. Every free white male citizen of the United States, who shall have attained the age of twentyone years, and who shall have been a citizen of this State six months, shall be deemed a qualified elector, and be entitled to vote in the county or district where he actually resides, for each and every office made elective under this State, or under the United States: *Provided*, that no soldier, seaman, or marine, in the army or navy of the United States, shall be entitled to vote at any election within this State.

TIME OF CHOOSING REPRESENTATIVES.

SEC. 3. The House of Representatives shall consist of members to be chosen every second year, by the qualified electors of the several counties.

QUALIFICATION OF A REPRESENTATIVE.

SEC. 4. No person shall be a member of the House of Representatives, who shall not have attained the age of twentyfive years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State one year; and who shall not, at the time of his election, have an actual residence in the county he may be chosen to represent.

QUALIFICATION OF A SENATOR.

SEC. 5. The Senate shall consist of members to be chosen every four years, by the qualified electors of the several districts.

SEC. 6. No person shall be a Senator, who shall not have attained the age of thirty years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State one year; and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent.

MEETING OF THE GENERAL ASSEMBLY.

SEC. 7. The General Assembly shall meet every two years, on the first Monday of November, at the seat of government, until altered by law.

MODE OF ELECTION AND TIME, AND PRIVILEGE OF ELECTORS.

SEC. 8. All general elections shall be *viva voce*, until otherwise directed by law, and shall commence and be holden, every two years, on the first Monday in October, until altered by law; and the electors, in all cases except in cases of treason, felony and breach of the peace,

shall be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

DUTY OF GOVERNOR.

SEC. 9. The Governor shall issue writs of election, to fill such vacancies as shall occur in either house of the General Assembly.

SEC. 10. No Judge of the Supreme, Circuit or Inferior Courts of law or equity, Secretary of State, Attorney for the State, State Auditor or Treasurer, Register or Recorder, Clerk of any Court of record, Sheriff, Coroner, member of Congress, nor any other person holding any lucrative office under the United States or this State, (militia officers, Justices of the Peace, Postmasters and Judges of the County Court excepted,) shall be eligible to a seat in either house of the General Assembly.

SEC. 11. No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the General Assembly, nor to any office of profit or trust, until he shall have accounted for and paid over, all sums for which he may have been liable.

SEC. 12. The General Assembly shall exclude from every office of trust or profit, and from the right of suffrage, within this State, all persons convicted of bribery, perjury, or other infamous crime.

SEC. 13. Every person who shall have been convicted of directly or indirectly giving or offering any bribe, to procure his election or appointment, shall be disqualified from holding any office of trust or profit under this State; and any person who shall give or offer any bribe to procure the election or appointment of any person, shall, on conviction thereof, be disqualified from being an elector, or from holding office of trust or profit under this State.

SEC. 14. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased, during his continuance of office; except to such office as shall be filled by the election of the people.

SEC. 15.. Each house shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as each house shall provide.

SEC. 16. Each house may determine the rules of its own proceedings, punish its own members for disorderly behavior, and, with the concurrence of two thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offence. They shall each from time to time, publish a journal of their proceedings, except such parts as may in their opinion require secrecy; and the yeas and nays upon any question shall be entered on the journal, at the desire of any five members.

SEC. 17. The door of each house, when in session or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence, during their session; but such imprisonment shall not extend beyond the final adjournment of that session.

SEC. 18. Bills may originate in either house, and be amended or rejected in the other; and every bill shall be read on three different days in each house, unless two thirds of the house where the same is pending shall dispense with the rules: And every bill having passed both houses, shall be signed by the President of the Senate and the Speaker of the House of Representatives.

SEC. 19. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the General Assembly, the vote shall be taken *viva voce*, and entered on the journal.

SEC. 20. The Senators and Representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest, during the session of the General Assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either House, they shall not be questioned in any other place.

SEC. 21. The members of the General Assembly shall severally receive, from the public treasury, compensation for their services, which may be increased or diminished; but no alteration of such compensation of members, shall take effect during the session at which it is made.

MANNER OF BRINGING SUITS AGAINST THE STATE.

SEC. 22. The General Assembly shall direct by law, in what courts, and in what manner suits may be commenced against the State.

SEC. 23. They shall have power to pass all laws that are necessary to prohibit the introduction into this State, of any slave or slaves, who may have committed any high crime, in any other State or Territory.

SEC. 24. The General Assembly shall not have power to pass any bill of divorce; but may prescribe by law the manner in which such cases shall be investigated in the courts of justice, and divorces granted.

SEC. 25. The General Assembly shall have power to prohibit the introduction of any slave or slaves, for the purpose of speculation, or as an article of trade or merchandise: To oblige the owner of any slave or slaves to treat them with humanity: And, in the prosecution of slaves for any crime, they shall not be deprived of an impartial jury; and any slave who shall be convicted of a capital offence, shall suffer the same degree of punishment as would be inflicted on a free white person, and no other; and courts of justice, before whom slaves shall be tried, shall assign them counsel for their defence.

SEC. 26. The Governor, Secretary of State, Auditor, Treasurer, and all the Judges of the Supreme, Circuit and Inferior Courts of law and equity, and the Prosecuting Attorneys for the State, shall be liable to impeachment, for any mal-practice or misdemeanor in office; but judgment in such cases shall not extend farther than removal from office, and disqualification to hold any office of honor, trust or profit under this State: The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished, according to law.

SEC. 27. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be on oath or affirmation to do justice according to law and evidence. When the Governor shall be tried, the Chief Justice of the Supreme Court shall preside; and no person shall be convicted without the concurrence of two thirds of all the Senators elected: And for reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall, on the joint address of two thirds of each branch of the Legislature, remove from office the Judges of Supreme and Inferior Courts: *Provided*, the cause or causes of removal be spread on the journals, and the party charged be notified of the same, and heard by himself and counsel, before the vote is finally taken and decided.

SEC. 28. The appointment of all officers, not otherwise directed by this Constitution, shall be made in such manner as may be prescribed by law: And all officers, both civil and military, acting under the authority of this State, shall, before entry on the duties of their respective offices, take an oath or affirmation to support the Constitution of the United States and of this State, and to demean themselves faithfully in office.

SEC. 29. No county now established by law, shall ever be reduced by the establishment of any new county or counties, to less than nine hundred square miles, nor to a less population than its ratio of representation in the House of Representatives; nor shall any county be hereafter established, which shall contain less than nine hundred square miles, (except Washington county, which may be reduced to six hundred square miles,) or a less population than would entitle each county to a member in the House of Representatives.

SEC. 30. The style of the laws of this State shall be "Be it enacted by the General Assembly of the State of Arkansas."

SEC. 31. The State shall from time to time be divided into convenient districts, in such manner that the Senate shall be based upon the free white male inhabitants of the State, each Senator representing an equal number, as nearly as practicable; and until the first enumeration of the inhabitants shall be taken, the districts shall be arranged as follows:

The county of Washington shall compose one district, and elect two Senators.

The counties of Carroll, Searcy and Izard shall compose one district, and elect one Senator.

The counties of Independence and Jackson shall compose one district, and elect one Senator.

The counties of Lawrence and Randolph shall compose one district, and elect one Senator.

The counties of Johnson and Pope shall compose one district, and elect one Senator.

The counties of Crawford and Scott shall compose one district, and elect one Senator.

The counties of Conway and Van Buren shall compose one district, and elect one Senator.

The counties of Pulaski, White and Saline shall compose one district, and elect one Senator.

The counties of Hot Spring, Clark and Pike shall compose one district, and elect one Senator.

The counties of Hempstead and Lafayette shall compose one district, and elect one Senator.

The counties of Sevier and Miller shall compose one district, and elect one Senator.

The counties of Chicot and Union shall compose one district, and elect one Senator.

The counties of Arkansas and Jefferson shall compose one district, and elect one Senator.

The counties of Phillips and Monroe shall compose one district, and elect one Senator.

The counties of St. Francis and Greene shall compose one district, and elect one Senator.

The counties of Crittenden and Mississippi shall compose one district, and elect one Senator.

And the Senate shall never consist of less than seventeen nor more than thirtythree members ; and as soon as the Senate shall meet after the first election to be held under this Constitution, they shall cause the Senators to be divided by lot into two classes — nine of the first class and eight of the second ; and the seats of the first class shall be vacated at the end of two years from the time of their election, and the seats of the second class at the end of four years from the time of their election ; in order that one class of the Senators may be elected every two years.

SEC. 32. An enumeration of the inhabitants of the State shall be taken under the direction of the General Assembly, on the first day of January, one thousand eight hundred and thirtyeight, and at the end of every four years thereafter ; and the General Assembly shall, at the first session after the return of every enumeration, so alter and arrange the senatorial districts that each district shall contain as nearly as practicable an equal number of free white male inhabitants : ***Provided***, that Washington county, as long as its population shall justify the same, may, according to its numbers, elect more than one Senator ; and such districts shall then remain unaltered, until the return of another enumeration, and shall at all times consist of contiguous territory ; and no county shall be divided in the formation of a senatorial district.

SEC. 33. The ratio of representation in the Senate, shall be

fifteen hundred free white male inhabitants to each Senator, until the Senators amount to twentyfive in number; and then they shall be equally apportioned, upon the same basis, throughout the State, in such ratio as the increased numbers of free white male inhabitants may require, without increasing the Senators to a greater number than twentyfive, until the population of the State amounts to five hundred thousand souls; and when an increase of Senators takes place, they shall from time to time be divided by lot, and classed as prescribed above.

SEC. 34. The House of Representatives shall consist of not less than fiftyfour, nor more than one hundred Representatives, to be apportioned among the several counties in this State, according to the number of free white male inhabitants therein, taking five hundred as the ratio, until the number of Representatives amounts to seventyfive; and when they amount to seventyfive, they shall not be further increased until the population of the State amounts to five hundred thousand souls: *Provided*, that each county now organized shall, although its population may not give the existing ratio, always be entitled to one Representative: And until the first enumeration shall be taken, the Representatives shall be apportioned among the several counties, as follows:

The county of Washington shall elect six Representatives.
The county of Scott shall elect one Representative.
The county of Johnson shall elect two Representatives.
The county of Pope shall elect two Representatives.
The county of Conway shall elect one Representative.
The county of Van Buren shall elect one Representative.
The county of Carroll shall elect two Representatives.
The county of Searcy shall elect one Representative.
The county of Izard shall elect one Representative.
The county of Independence shall elect two Representatives.
The county of Crawford shall elect three Representatives.
The county of Jackson shall elect one Representative.
The county of Lawrence shall elect two Representatives.
The county of Randolph shall elect two Representatives.
The county of White shall elect one Representative.
The county of Pulaski shall elect two Representatives.
The county of Saline shall elect one Representative.
The county of Hot Spring shall elect one Representative.
The county of Clark shall elect one Representative.

The county of St. Francis shall elect two Representatives.
The county of Pike shall elect one Representative.
The county of Hempstead shall elect two Representatives.
The county of Miller shall elect one Representative.
The county of Sevier shall elect one Representative.
The county of Lafayette shall elect one Representative.
The county of Union shall elect one Representative.
The county of Arkansas shall elect two Representatives.
The county of Jefferson shall elect one Representative.
The county of Monroe shall elect one Representative.
The county of Phillips shall elect two Representatives.
The county of Greene shall elect one Representative.
The county of Crittenden shall elect two Representatives.
The county of Mississippi shall elect one Representative.
The county of Chicot shall elect two Representatives.

And at the first session of the General Assembly after the return of every enumeration, the representation shall be equally divided and reapportioned among the several counties, according to the number of free white males in each county, as above prescribed.

MODE OF AMENDING THE CONSTITUTION.

The General Assembly may at any time propose such amendments to this Constitution as two thirds of each house shall deem expedient, which shall be published in all the newspapers published in this State, three several times, at least twelve months before the next general election; and if, at the first session of the General Assembly after such general election, two thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes, as parts of this Constitution: *Provided*, that such proposed amendments shall be read on three several days, in each house, as well when the same are proposed, as when they are finally ratified.

ARTICLE V.

EXECUTIVE DEPARTMENT.

SEC. 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Arkansas."

SEC. 2. The Governor shall be elected by the qualified electors, at the time and places where they shall respectively vote for representatives.

SEC. 3. The returns of every election for Governor shall be sealed up, and transmitted to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in the presence of both Houses of the General Assembly. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of both houses. Contested elections for Governor shall be determined by both houses of the General Assembly, in such manner as shall be prescribed by law.

SEC. 4. The Governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified; but he shall not be eligible for more than eight years in any term of twelve years. He shall be at least thirty years of age, a native born citizen of Arkansas, or a native born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this Constitution, if not a native of the United States; and shall have been a resident of the same at least four years next before his election.

SEC. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, within that period, any other emolument from the United States, or any one of them, or from any foreign power.

SEC. 6. He shall be commander-in-chief of the army of this State, and of the militia thereof, except when they shall be called into the service of the United States.

SEC. 7. He may require information, in writing, from the officers of the Executive Department, on any subject relating to the duties of their respective offices.

SEC. 8. He may, by proclamation, on extraordinary occasions, convene the General Assembly, at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or from contagious diseases. In case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the General Assembly.

SEC. 9. He shall, from time to time, give to the General Assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason, he shall have power, by and with the advice and consent of the Senate, to grant reprieves and pardons; and he may, in the recess of the Senate, respite the sentence until the end of the next session of the General Assembly.

SEC. 12. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and the present seal of the Territory shall be the seal of the State, until otherwise directed by the General Assembly.

SEC. 13. All commissions shall be in the name and by the authority of the State of Arkansas, be sealed with the seal of the State, signed by the Governor, and attested by the Secretary of State.

SEC. 14. There shall be a Secretary of State, elected by a joint vote of both houses of the General Assembly, who shall continue in office during the term of four years, and until his successor in office be duly qualified. He shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the General Assembly; and shall perform such other duties as may be required by law.

SEC. 15. Vacancies that may happen in offices, the election to which is vested in the General Assembly, shall be filled by the Governor during the recess of the General Assembly, by granting commissions, which shall expire at the end of the next session.

SEC. 16. Every bill which shall have passed both houses, shall be presented to the Governor. If he approve, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it shall have originated, who shall enter his objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered; and if approved by a majority of the whole number elected to that house, it

shall be a law; but, in such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in such case it shall not be a law.

SEC. 17. Every order or resolution, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of a bill.

SEC. 18. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the President of the Senate shall exercise all the authority appertaining to the office of Governor, until another Governor shall have been elected and qualified, or until the Governor, absent or impeached, shall return or be acquitted.

SEC. 19. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the House of Representatives shall, in like manner, administer the government.

SEC. 10. The President of the Senate, and Speaker of the House of Representatives, during the time they respectively administer the government, shall receive the same compensation which the Governor would have received, had he been employed in the duties of his office.

SEC. 21. Whenever the office of Governor shall have become vacant, by death, resignation, removal from office, or otherwise, provided such vacancy shall not happen within eighteen months of the term for which the late Governor shall have been elected, the President of the Senate, or Speaker of the House of Representatives, as the case may be, exercising the powers of Governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general elections of Governor, as far as applicable; the returns shall be made to the Secretary of State, who, in presence of the acting Governor,

and the Judges of the Supreme Court, or one of them at least, shall compare them, and together with said acting Governor and Judges, declare who is elected: and if there be a contested election, it shall be decided by the Judges of the Supreme Court, in manner to be prescribed by law.

SEC. 22. The Governor shall always reside at the seat of government.

SEC. 23. No person shall hold the office of Governor and any other office or commission, civil or military, either in this State, or under any State, or the United States, or any other power, at one and the same time.

Sec. 24. There shall be elected, by the joint vote of both houses of the General Assembly, an Auditor, and Treasurer for this State, who shall hold their offices for the term of two years, and until their respective successors are elected and qualified, unless sooner removed; and shall keep their respective offices at the seat of government, and perform such duties as shall be prescribed by law: And in case of vacancy, by death, resignation, or otherwise, such vacancy shall be filled by the Governor, as in other cases.

MILITIA.

SEC. 1. The militia of this State shall be divided into convenient divisions, brigades, regiments and companies, and officers of corresponding titles and rank elected to command them, conforming, as nearly as practicable, to the general regulations of the army of the United States.

SEC. 2. Major Generals shall be elected by the Brigadier Generals and field officers of their respective divisions; Brigadier Generals shall be elected by the field officers and commissioned company officers of their respective brigades; field officers shall be elected by the officers and privates of their respective regiments; and Captains and subaltern officers shall be elected by those subject to military duty in their respective companies.

SEC. 3. The Governor shall appoint the Adjutant General and other members of his staff; and Major Generals, Brigadier Generals, and commanders of regiments, shall respectively appoint their own staff: And all commissioned officers may continue in office during good behavior; and staff officers during the same time, subject to be removed by the superior officer from whom they respectively derive their commissions.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SEC. 1. The judicial power of this State shall be vested in one Supreme Court, in Circuit Courts, in County Courts, and in Justices of the Peace: The General Assembly may also vest such jurisdiction as may be deemed necessary in Corporation Courts; and when they deem it expedient, may establish Courts of Chancery.

SEC. 2. The Supreme Court shall be composed of three Judges, one of whom shall be styled Chief Justice, any two of whom shall constitute a quorum, and the concurrence of any two of said Judges shall, in every case, be necessary to a decision. The Supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations as may, from time to time, be prescribed by law: It shall have a general superintending control over all Inferior and other Courts of law and equity: It shall have power to issue writs of error and supersedeas, certiorari and habeas corpus, mandamus and quo warranto, and other remedial writs, and to hear and determine the same. Said Judges shall be conservators of the peace throughout the State. And shall severally have power to issue any of the aforesaid writs.

SEC. 3. The Circuit Court shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction of all crimes amounting to felony at the common law; and original jurisdiction of all civil cases which shall not be cognizable before Justices of the Peace, until otherwise directed by the General Assembly; and original jurisdiction in all matters of contract, where the sum in controversy is over one hundred dollars. It shall hold its terms at such place in each county as may be by law directed.

SEC. 4. The State shall be divided into convenient circuits, each to consist of not less than five nor more than seven counties contiguous to each other, for each of which a Judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

SEC. 5. The Circuit Courts shall exercise a superintending control over the County Courts, and over Justices of the Peace, in each county in their respective circuits; and shall have power to issue all

the necessary writs to carry into effect their general and specific powers.

SEC. 6. Until the General Assembly shall deem it expedient to establish Courts of Chancery, the Circuit Courts shall have jurisdiction in matters of equity, subject to appeal to the Supreme Court, in such manner as may be prescribed by law.

SEC. 7. The General Assembly shall, by joint vote of both houses, elect the Judges of the Supreme and Circuit Courts, a majority of the whole number in joint vote being necessary to a choice. The Judges of the Supreme Court shall be at least thirty years of age; they shall hold their offices during the term of eight years from the date of their commissions. Immediately after such election, by the first General Assembly, the President of the Senate and Speaker of the House of Representatives shall proceed by lot to divide the Judges into three classes: The commission of the first class shall expire at the end of four years; of the second class at the end of six years; and of the third class at the end of eight years: so that one third of the whole number shall be chosen every four, six and eight years. The Judges of the Circuit Court shall be at least twentyfive years of age, and shall be elected for the term of four years from the date of their commissions. The Supreme Court shall appoint its own Clerk or Clerks, for the term of four years. The qualified voters of each county shall elect a Clerk of the Circuit Court for their respective counties, who shall hold his office for the term of two years; and Courts of Chancery, if any be established, shall appoint their own Clerks.

SEC. 8. The Judges of the Supreme and Circuit Courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this State or the United States. The State's Attorneys, snd Clerks of the Supreme and Circuit Courts, and Courts of Chancery, if any such be established, shall receive for their services such salaries, fees, and perquisites of office, as shall be from time to time fixed by law.

SEC. 9. There shall be established in each county in the State, a Court to be holden by the Justices of the Peace and called the County Court, which shall have jurisdiction in all matters relating to county taxes, disbursements of money for county purposes, and in every

other case that may be necessary to the internal improvement and local concerns of the respective counties.

SEC. 10. There shall be elected, by the Justices of the Peace of the respective counties, a presiding Judge of the County Court, to be commissioned by the Governor, and hold his office for the term of two years, and until his successor is elected and qualified. He shall, in addition to the duties that may be required of him by law, as a presiding Judge of the County Court, be a Judge of the Court of Probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators and guardians, as may be prescribed by law, until otherwise directed by the General Assembly.

SEC. 11. The presiding Judge of the County Court and Justices of the Peace shall receive for their services such compensation and fees as the General Assembly may from time to time by law direct.

SEC. 12. No Judge shall preside on the trial of any cause, in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been of counsel, or have presided in any inferior court, except by consent of all the parties. In case all or any of the Judges of the Supreme Court shall be thus disqualified from presiding on any cause or causes, the Court or Judges thereof shall certify the same to the Governor of the State, and he shall immediately commission specially the requisite number of men, of law knowledge, for the trial and determination thereof. The same course shall be pursued in the Circuit and other Inferior Courts, as prescribed in this section for cases in the Supreme Court. — Judges of the Circuit Courts may temporarily exchange circuits, or hold courts for each other, under such regulations as may be pointed out by law. Judges shall not charge juries with regard to matter of fact ; but may state the testimony and declare the law.

SEC. 13. The General Assembly shall, by a joint vote of both Houses, elect an Attorney for the State for each circuit established by law, who shall continue in office two years, and reside within the circuit for which he was elected at the time of and during his continuance in office. In all cases where an Attorney for the State of any circuit fails to attend and prosecute according to law, the Court shall have power to appoint an Attorney *pro tempore*. The Attorney for

the circuit in which the Supreme Court may hold its terms, shall attend the Supreme Court and prosecute for the State.

SEC. 14. All writs and other process shall run in the name of the "State of Arkansas," and bear teste and be signed by the Clerks of the respective Courts from which they issue. Indictments shall conclude "against the peace and dignity of the State of Arkansas."

SEC. 15. The qualified voters residing in each township shall elect the Justices of the Peace for their respective townships. For every fifty voters there may be elected one Justice of the Peace: *Provided*, That each township, however small, shall have two Justices of the Peace. Justices of the Peace shall be elected for the term of two years, and shall be commissioned by the Governor, and reside in the townships for which they were elected, during their continuance in the office. They shall have individually, or two or more of them jointly, exclusive original jurisdiction in all matters of contract, except in actions of covenant, where the sum in controversy is of one hundred dollars and under. Justices of the Peace shall in no case have jurisdiction to try and determine any criminal case or penal offence against the State; but may sit as examining courts, and commit, discharge, or recognize to the Court having jurisdiction, for further trial, offenders against the peace. For the forgoing purposes, they shall have power to issue all necessary process. They shall also have power to bind to keep the peace, or for good behavior.

SEC. 16. The qualified voters of each township shall elect one Constable, for the term of two years, who shall, during his continuance in office, reside in the township for which he was elected. Incorporated towns may have a separate Constable and a separate magistracy.

SEC. 17. The qualified voters of each county shall elect one Sheriff, one Coroner, one Treasurer, and one County Surveyor, for the term of two years. They shall be commissioned by the Governor, reside in their respective counties during their continuance in office, and be disqualified for the office a second term, if it should appear that they or either of them are in default for any moneys collected by virtue of their respective offices.

ARTICLE VII.

GENERAL PROVISIONS.—EDUCATION.

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government—and diffusing

the opportunities and advantages of education through the various parts of the State being highly conducive to this end — it shall be the duty of the General Assembly to provide by law for the improvement of such lands as are or hereafter may be granted by the United States to this State for the use of schools, and to apply any funds which may be raised from such lands, or from any other source, to the accomplishment of the object for which they are or may be intended. The General Assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures and natural history; and countenance and encourage the principles of humanity, industry and morality.

EMANCIPATION OF SLAVES.

SEC. 1. The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of the owners. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States. They shall have power to pass laws to permit owners of slaves to emancipate them, saving the right of creditors, and preventing them from becoming a public charge. They shall have power to prevent slaves from being brought to this State as merchandise, and also to oblige the owners of slaves to treat them with humanity.

SEC. 2. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 3. No person who denies the being of a God, shall hold any office in the civil department of this State, nor be allowed his oath in any court.

SEC. 4. No money shall be drawn from the treasury but in consequence of an appropriation by law, nor shall any appropriation of money for the support of an army be made for a longer term than two years; and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

SEC. 5. Absence on business of this State or of the United States,

or on a visit or necessary private business, shall not cause a forfeiture of a residence once obtained.

SEC. 6. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

SEC. 7. Internal improvement shall be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals and navigable waters; and it shall also be their duty to provide by law for an equal, systematic and economical application of the funds which may be appropriated to these objects.

SEC. 8. Returns for all elections for officers who are to be commissioned by the Governor, and for members of the General Assembly, shall be made to the Secretary of State.

SEC. 9. Within five years after the adoption of this Constitution, the laws, civil and criminal, shall be revised, digested and arranged, and promulgated in such manner as the General Assembly may direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years.

SEC. 10. In the event of the annexation of any territory to this State, by a cession from the United States, laws may be passed extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, any thing in this Constitution to the contrary notwithstanding.

SEC. 11. The person of a debtor, except where there is strong presumption of fraud, shall neither be imprisoned nor continued in prison, after delivering up his estate for the benefit of his creditors, in such manner as may be prescribed by law.

REVENUE.

SEC. 1. All revenue shall be raised by taxation, to be fixed by law.

SEC. 2. All property *subject to taxation*, shall be taxed according to its value — that value to be ascertained in such manner as the General Assembly shall direct; making the same equal and uniform throughout the State. No one species of property, from which a tax may be collected, shall be taxed higher than another species of property, of equal value: *Provided*, the General Assembly shall have power to tax merchants, hawkers, pedlers and privileges, in such manner as may from time to time be prescribed by law: *And pro-*

vided further, that no other or greater amount of revenue shall at any time be levied than required for the necessary expenses of the government, unless by a concurrence of two thirds of both houses of the General Assembly.

SEC. 3. No poll tax shall be assessed for other than county purposes.

SEC. 4. No other or greater tax shall be levied on the productions or labor of the country, than may be required for expenses of inspection.

ESTABLISHMENT OF BANKS.

SEC. 1. The General Assembly may incorporate one State Bank, with such amount of capital as may be deemed necessary, and such number of branches as may be required for the public convenience, which shall become the repository of the funds belonging to or under the control of the State; and shall be required to loan them out throughout the State, and in each county, in proportion to representation. And they shall further have power to incorporate one other banking institution, calculated to aid and promote the great agricultural interests of the country; and the faith and credit of the State may be pledged to raise the funds necessary to carry into operation the two Banks herein specified: *Provided*, such security can be given by the individual stockholders as will guarantee the State against loss or injury.

SCHEDULE.

SEC. 1. That no inconvenience may arise from the change of government, we declare that all writs, actions, prosecutions, judgments, claims and contracts of individuals and bodies corporate, shall continue as if no change had taken place; and all process which may be issued under the authority of the Territory of Arkansas, previous to the admission of Arkansas into the Union of the United States, shall be as valid as if issued in the name of the State.

SEC. 2. All laws now in force in the Territory of Arkansas, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the General Assembly.

SEC. 3. All fines, penalties and escheats, accruing to the Territory of Arkansas, shall accrue to the use of the State.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change of Territorial to a permanent State Govern-

ment, shall remain valid, and shall pass over to, and be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer or court, in his or their official capacity, shall pass over to the Governor or other State authority, and their successors in office, for the uses therein respectively expressed; and may be sued for and recovered accordingly. All criminal prosecutions and penal actions, which may have arisen, or which may arise, before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All actions at law, which now are or may be pending in any of the Courts of record in the Territory of Arkansas, may be commenced in or transferred to any Court of record of the State which shall have jurisdiction of the subject matter thereof; and all suits in equity may, in like manner, be commenced in or transferred to the Court having chancery jurisdiction.

SEC. 5. All officers, civil and military, now holding commissions under authority of the United States, or of the Territory of Arkansas, shall continue to hold and exercise their respective offices until they shall be superseded under the authority of the State.

SEC. 6. The first session of the General Assembly of the State of Arkansas shall be held at the city of Little Rock, which shall be and remain the seat of government until otherwise provided for by law.

SEC. 7. Elections shall be held at the several precincts, on the first Monday of August next, for a Governor; also one Representative to the Congress of the United States; also, for Senators and Representatives to the next General Assembly, Clerks of the Circuit and County Courts, Sheriffs, Coroners, County Surveyors and Treasurers, Justices of the Peace, and Constables.

SEC. 8. The next General Assembly shall be holden on the second Monday of September next.

SEC. 9. The election shall be conducted according to the existing laws of the Territory of Arkansas; and the returns of all township elections held in pursuance thereof, shall be made to the Clerks of the proper counties, within five days after the day of election. The Clerks of the Circuit Courts of the several counties shall immediately thereafter certify the returns of the election of Governor, and transmit the same to the Speaker of the House of Representatives, at the seat of government, in such time that they may be received on the second Monday of September next. As soon as the General

Assembly shall be organized, the Speaker of the House of Representatives and the President of the Senate shall, in the presence of both houses, examine the returns, and declare who is duly elected to fill that office; and if any two or more persons shall have an equal number of votes, and a higher number than any other person, the General Assembly shall determine the election by a joint vote of both houses; and the returns of the election for member to Congress shall be made to the Secretary of State, within thirty days after the day of election.

SEC. 10. The oaths of office may be administered by any Judge or Justice of the Peace, until the General Assembly shall otherwise direct.

DONE in Convention, at Little Rock, in the State of Arkansas, the thirtieth day of January, in the year of our Lord eighteen hundred and thirtysix, and in the sixtieth year of the independence of the United States of America.

JOHN WILSON,

President of the Convention, and Representative from the County of Clark.

JOHN ADAMS,
WM. McK. BALL,
JAS. WOODSON BATES,
MARK BEAN,
HENRY LAWSON BISCOE,
JAMES BOONE,
R. C. S. BROWN,
JOHN D. CALVERT,
LORENZO N. CLARKE,
JOHN CLARK,
J. S. CONWAY,
WILLIAM CUMMINS,
ANTHONY H. DAVIES,
TOWNSEND DICKINSON,
JOHN DRENNEN,
THOMAS S. DREW,
WRIGHT W. ELLIOTT,
TERENCE FARRELLY,
GEORGE W. FEREBEE,
ABSALOM FOWLER,
GEORGE HALBROOK,
ELIJAH KELLY,
JOHN F. KING,
THOS. J. LACY,
JOHN L. LAFFERTY,
BUSHROD W. LEE,
DAVID W. LOWE,
CALEB S. MANLY,
G. MARSHALL,
G. L. MARTIN,
ANDREW J. MAY,
ROBERT M'CAMY,
JOS. W. M'KEAN,
JOHN McLAIN,
NIMROD MENEFEE,
THOMAS MURRAY, JR.
JOHN RINGGOLD,
SAM. C. ROANE,
JOHN ROBINSON,
GRANDISON D. ROYSTON,
CHARLES R. SAUNDERS,
ANDREW SCOTT,
HENRY SLAVENS,
ROBERT SMITH,
WM. STRONG,
JAMES H. WALKER,
DAVID WALKER,
JOSIAH N. WILSON,
ABRAHAM WHINNERY,
TRAVIS G. WRIGHT,

CHARLES P. BERTRAND, *Secretary to the Convention.*

TREATY

BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC.

THE President of the United States of America, and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the Convention of the 8th Vendemiaire, *an.* 9 (30th September, 1800) relative to the rights claimed by the United States, in virtue of the Treaty concluded at Madrid, the 27th October, 1795, between His Catholic Majesty and the said United States, and willing to strengthen the union and friendship which, at the time of the said Convention, was happily re-established between the two nations, have respectively named their Plenipotentiaries, to wit: the President of the United States of America, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, Minister Plenipotentiary, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary, of the said States, near the government of the French Republic; and the First Consul, in the name of the French people, the French citizen Barbe Marbois, Minister of the Public Treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ART. 1. Whereas, by article the third of the Treaty concluded at St. Ildefonso, the 9th Vendemiaire, *an* 9, (1st October, 1800,) between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows: "His Catholic Majesty promises and engages, on his part, to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the Colony or Province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as

it should be after the treaties subsequently entered into between Spain and other States." And whereas, in pursuance of the Treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said Territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States in the name of the French Republic, for ever and in full sovereignty, the said Territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the above mentioned Treaty concluded with His Catholic Majesty.

ART. 2. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the Commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them.

ART. 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal Constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

ART. 4. There shall be sent by the government of France, a Commissary to Louisiana, to the end that he do every act necessary, as well to receive, from the officers of His Catholic Majesty, the said country and its dependencies, in the name of the French Republic, if it thus has not been already done, as to transmit it, in the name of the French Republic, to the Commissary or Agent of the United States.

ART. 5. Immediately after the ratification of the present Treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the Commissary of the French Republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the Commissary or Commissaries named by the President to take possession; the troops, whether of

France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this Treaty.

ART. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present Treaty, until general arrangements for the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships coming directly from France, or any of her colonies, loaded only with the produce or manufactures of France, or any of her said colonies, and the ships of Spain coming directly from Spain, or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted, during the space of twelve years, in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other greater tonnage, than those paid by the citizens of the United States. During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight, and navigation, of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

ART. 8. In future and for ever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

ART. 9. The particular Convention signed this day by the respective Ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic, prior to the 30th September, 1800, (8th Vendemiaire, 9,) is approved, and to have its execution in the same manner as if it had been inserted in the present Treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other. Another particular Convention, signed at the same date as the present Treaty, relative to a definitive rule between the contracting parties, is in like manner approved, and will be ratified in the same form, and in the same time, and jointly.

ART. 10. The present Treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the Ministers Plenipotentiary, and sooner if possible.

IN FAITH WHEREOF, the respective Plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present Treaty was originally agreed to in the French language; and have thereunto put their seals.

DONE at Paris, the tenth day of Floreal, in the eleventh year of the French Republic, and the thirtieth of April, 1803.

ROBERT R. LIVINGSTON, [L. S.]
JAMES MONROE, [L. S.]
BARBE MARBOIS. [L. S.]

CONVENTION

BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC.

THE President of the United States of America and the first Consul of the French Republic, in the name of the French people, in consequence of the Treaty of Cession of Louisiana, which has been signed this day, wishing to regulate definitively every thing which has relation to the said cession, have authorized to this effect the Plenipotentiaries,

that is to say : the President of the United States has, by and with the advice and consent of the Senate of the said States, nominated for their Plenipotentiaries, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said United States, near the government of the French Republic, and the First Consul of the French Republic, in the name of the French people, has named, as Plenipotentiary of the said Republic, the French citizen Barbe Marbois; who in virtue of their full powers, which have been exchanged this day, have agreed to the following articles :

ART. 1. The government of the United States engages to pay to the French government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another Convention for the payment of the debts due by France to citizens of the United States.

ART. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable half yearly, in London, Amsterdam, or Paris, amounting, by the half year, to three hundred and thirtyseven thousand five hundred dollars, according to the proportions which shall be determined by the French government to be paid at either place : the principal of said stock to be reimbursed at the treasury of the United States, in annual payments of not less than three millions of dollars each ; of which the first payment shall commence fifteen years after the date of the exchange of ratifications. This stock shall be transferred to the government of France, or to such person or persons as shall be authorized to receive it, in three months at most after the exchange of the ratifications of this Treaty, and after Louisiana shall be taken possession of in the name of the government of the United States.

It is further agreed that if the French government should be desirous of disposing of the said stock, to receive the capital in Europe, at shorter terms, that its measures for that purpose shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock.

ART. 3. It is agreed that the dollar of the United States specified in the present Convention, shall be fixed at five francs $\frac{3333}{100000}$ or five livres eight sous tournois.

The present Convention shall be ratified in good and due form, and

the ratifications shall be exchanged in the space of six months, to date from this day, or sooner if possible.

IN FAITH OF WHICH, the respective plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language; to which they have hereunto affixed their seals.

DONE at Paris, the tenth of Floreal, eleventh year of the French Republic, (30th April, 1803.)

ROBERT R. LIVINGSTON, [L. S.]
JAMES MONROE, [L. S.]
BARBE MARBOIS, [L. S.]

ACT OF ADMISSION.

An Act for the Admission of the State of Arkansas into the Union, and to provide for the due execution of the Laws of the United States within the same, and for other purposes.

WHEREAS, the People of the Territory of Arkansas did, on the thirtieth day of January, in the present year, by a Convention of Delegates, called and assembled for that purpose, form for themselves a Constitution and State Government, which Constitution and State Government, so formed, is republican; and whereas, the number of inhabitants within the said Territory exceeds fortyseven thousand seven hundred persons, computed according to the rule prescribed by the Constitution of the United States; and the said Convention have, in their behalf, asked the Congress of the United States to admit the said Territory into the Union as a State, on an equal footing with the original States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Arkansas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever; and the said State shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirtysix degrees north latitude; running from thence west, with the said parallel of latitude, to the St. Francis river; thence, up the middle of the main channel of said river, to the parallel of thirtysix degrees thirty minutes north; from thence west, to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red river, by the lines described in the first article of the treaty between the United States and the Cherokee nation of Indians west of the Mississippi, made and concluded at the city of Washington, on

the 26th day of May, in the year of our Lord one thousand eight hundred and twentyeight; and to be bounded on the south side of Red river by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east, with the Louisiana State line, to the middle of the main channel of the Mississippi river; thence, up the middle of the main channel of the said river, to the thirtysixth degree of north latitude, the point of beginning.

SEC. 2. *And be it further enacted*, That until the next general census shall be taken, the said State shall be entitled to one Representative in the House of Representatives of the United States.

SEC. 3. *And be it further enacted*, That all the Laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said State of Arkansas, as elsewhere within the United States.

SEC. 4. *And be it further enacted*, That the said State shall be one judicial district, and be called the Arkansas District; and a District Court shall be held therein, to consist of one Judge, who shall reside in the said district and be called a District Judge. He shall hold, at the seat of government of the said State, two sessions annually, on the first Mondays of April and November; and he shall in all things have and exercise the same jurisdiction and powers which were by law, given to the Judge of the Kentucky District, under an act entitled "An act to establish the Judicial Courts of the United States." He shall appoint a Clerk for the said District Court, who shall reside and keep the records of the court at the place of holding the same; and shall receive, for the services performed by him, the same fees to which the Clerk of the Kentucky District is entitled for similar services.

SEC. 5. *And be it further enacted*, That there shall be allowed to the Judge of the said District Court the annual compensation of two thousand dollars, to commence from the date of his appointment, to be paid quarter yearly at the treasury of the United States.

SEC. 6. *And be it further enacted*, That there shall be appointed in the said district, a person learned in the law, to act as Attorney for the United States, who shall, in addition to his stated fees, be paid by the United States two hundred dollars, as a full compensation for all extra services.

SEC. 7. *And be it further enacted*, That a Marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed to Marshals in other districts; and he

shall, moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

SEC. 8. *And be it further enacted*, That the State of Arkansas is admitted into the Union upon the express condition, that the people of the said State shall never interfere with the primary disposal of the public lands within the said State, nor shall they levy a tax on any of the lands of the United States within the said State; and nothing in this act shall be construed as an assent by Congress to all or any of the propositions contained in the ordinances of the said Convention of the People of Arkansas, nor to deprive the said State of Arkansas of the same grants, subject to the same restrictions, which were made to the State of Missouri by virtue of an act entitled "An act to authorize the people of the Missouri Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and to prohibit Slavery in certain Territories," approved the sixth day of March, one thousand eight hundred and twenty.

[Approved: June 16, 1836.]

COMPACT.

An Act supplementary to the Act entitled "An Act for the Admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes."

BE *it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed by the Convention of Delegates at Little Rock, assembled for the purpose of making a Constitution for the State of Arkansas, which are hereby rejected; and that the following propositions be, and the same are hereby offered to the General Assembly of the State of Arkansas, for their free acceptance or rejection, which, if accepted, under the authority granted to the General Assembly for this purpose, by the Convention which framed the Constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township, and when such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State, for the use of the inhabitants of such township, for the use of schools.

Second. That all salt springs, not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said State, for the use of said State, the same to be selected by the General Assembly thereof, on or before the first day of January, one thousand eight hundred and forty; and the same, when so selected, to be used under such terms, conditions, and regulations, as the General Assembly of the said State shall direct: *Provided*, that no salt spring the right whereof is now vested in any individual or individuals, or

which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: *And provided also*, that the General Assembly shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of Congress; and that nothing contained in the act of Congress entitled "An act authorizing the Governor of the Territory of Arkansas to lease the salt springs in said Territory, and for other purposes," or in any other act, shall be construed to give to the said State any further or other claim whatsoever to any salt springs, or lands adjoining thereto, than to those hereby granted.

Third. That five per cent. of the net proceeds of the sale of lands lying within the said State, and which shall be sold by Congress, from and after the first day of July next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals within the said State, under the direction of the General Assembly thereof.

Fourth. That a quantity of land not exceeding five sections be, and the same is hereby, granted to the said State, in addition to the ten sections which have already been granted, for the purpose of completing the public buildings of the said State at Little Rock; which said five sections shall, under the direction of the General Assembly of said State, be located, at any time, in legal divisions of not less than one quarter section, in such townships and ranges as the General Assembly aforesaid may select, on any of the unappropriated lands of the United States within the said State.

Fifth. That the two entire townships of land which have already been located by virtue of the act entitled "An act concerning a seminary of learning in the Territory of Arkansas," approved the second of March, one thousand eight hundred and thirtyseven, are hereby vested in and confirmed to the General Assembly of the said State, to be appropriated solely to the use of such seminary by the General Assembly: *Provided*, that the five foregoing propositions herein offered, are on the condition that the General Assembly or Legislature of the said State, by virtue of the powers conferred upon it by the Convention which framed the Constitution of the said State, shall provide, by an ordinance irrevocable without the consent of the United States, that the said General Assembly of said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax

shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively.

[Approved: June 23, 1836.]

ORDINANCE

AND

ACCEPTANCE OF COMPACT.

BE *it ordained by the General Assembly of the State of Arkansas*, by virtue of the authority vested in said General Assembly by the provisions of the ordinance adopted by the Convention of Delegates assembled at Little Rock, for the purpose of forming a Constitution and system of government for said State, That the propositions set forth in "An act supplementary to the act entitled 'An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,'" be, and the same are hereby, freely accepted, ratified, and irrevocably confirmed, as articles of compact and union between the State of Arkansas and the United States.

And be it further ordained by the authority aforesaid, That the General Assembly of the State of Arkansas shall never interfere, without the consent of the United States, with the primary disposal of the soil within said State, owned by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than resident; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order, or under the authority, of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively.

[Approved: October 18, 1836.]

AUTHENTICATION.

EXTRACTS FROM THE VARIOUS ACTS OF CONGRESS CONCERNING AUTHENTICATION.

THE acts of the legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the courts of any State shall be proved or admitted in any other court within the United States, by the attestation of the Clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the Judge, Chief Justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are or shall be taken. — *Act of May* 26, 1790.

1. All records and exemplifications of office books, which are or may be kept in any public office of any State not appertaining to a court, shall be proved or admitted in any other court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding Justice of the court of the county or district, as the case may be, in which such office is or may be kept, or of the Governor, the Secretary of State, the Chancellor or keeper of the great seal of the State, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding Justice of a court, shall be further authenticated by the Clerk or Prothonotary of the said court, who shall certify under his hand and the seal of his office, that the said presiding Justice is duly commissioned and qualified; or if the said certificate be given by the Governor, the Secretary of State, the Chancellor or keeper of the great seal, it shall be under the great seal of the State in which the said certificate is made.

And the said records and exemplifications authenticated as aforesaid shall have such faith and credit given to them, in every court and office within the United States, as they have by law or usage in the courts or offices of the State from whence the same are or shall be taken.

2. All the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts, and offices, of the respective Territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts, and offices, of the several States. — *Act of March* 27, 1804.

Any person claiming to be interested in, or entitled to, land under a grant or patent from the United States, may apply to the Treasury Department for copies of papers filed and remaining therein, affecting the title to such land ; and the Secretary of the Treasury shall cause such copies to be made out and authenticated under his hand and seal, for such person, which, so authenticated, shall be evidence equally as the original papers. — *Act of January* 23, 1823.

STATUTES OF ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS—AS FOLLOWS:

CHAPTER 1.

ABATEMENT.

SECTION

1. Pleas in, to be sworn to, and exceptions.
2. Full costs on overruling plea in.
3. Non-joinder of one of a company, &c. who should be defendant, not to abate suit, but to be brought in by summons.
4. If not found, course of plaintiff.
5. In actions by partners, not necessary to prove the partnership, unless put in issue by plea in, verified by affidavit.
6. Feme sole plaintiff intermarrying, not to abate suit, but husband to be made co-plaintiff, and how.
7. Feme sole defendant intermarrying.
8. Death of co-plaintiff not to abate action, when; and death of co-defendant, and how action to proceed.
9. Death of sole plaintiff, not to abate action, when — and how to proceed.
10. Death of sole defendant, not to abate action, when, and how to proceed.
11. Death of either party, after verdict and before judgment entered, effect of.

SECTION

12. Not to apply to party dying before verdict actually rendered.
13. Death or departure from office of executor or administrator, plaintiff not to abate suit, but suit to proceed and how.
14. Of executor or administrator defendant, suit not to abate, but to be continued, and how.
15. Death of public officer, plaintiff, not to abate suit, but suit to proceed, and how.
16. Orders of court to bring in or substitute new parties, how to be made; and writs of scire facias, how issued, &c.
17. Within what time such writs shall be sued out.
18. Person substituted as, or made a party, entitled to a continuance, but opposite party not.
19. How suit shall afterwards proceed.

SEC. 1. No plea in abatement, other than a plea to the jurisdiction of the court, or where the truth of such plea appears of record, shall be admitted or received, by any court in this State, unless the party offering the same, or some other person for him, shall make affidavit of the truth thereof.

SEC. 2. When a plea in abatement, shall be adjudged insufficient,

by the court, the plaintiff shall recover full costs, to the time of overruling such plea.

SEC. 3. When one or more of the partners of any company, or association of individuals shall be sued, and the person or persons so sued, shall plead in abatement that all the parties are not joined in the suit, such suit for that cause, shall not abate, if the plaintiff forthwith sue out a summons against the other partners named in such plea; and on the return of such summons, the names of the other partners named in such plea, may be inserted in the declaration, and the suit shall proceed in all other respects thereafter as if the partner named in such plea, had been included in the original suit.

SEC. 4. If the partners named in such plea cannot be found, the plaintiff, on the return of such summons, may suggest on the record, the names of those not found, and proceed as in other cases where service is only made on part of the defendants, and no other plea in abatement for non-joinder of defendants, shall be allowed in the same case.

SEC. 5. In actions brought by partners, it shall not be necessary to prove the partnership, unless the defendant shall, in his plea, deny that the plaintiffs are partners, or carry on business as described in the declaration, and no such plea shall be admitted, unless it be verified by affidavit.

SEC. 6. No action commenced by a feme sole, who intermarries before final judgment, shall thereby abate, but the husband, on his own application, may, by order of the court, be made co-plaintiff with her in the suit.

SEC. 7. If a feme sole defendant marry, before final judgment, the action shall not thereby abate, but her husband, on his own application, or on application of the the plaintiff, may, by order of the court, be made co-defendant with her.

SEC. 8. If there are two or more plaintiffs in any action, and one of them die, before final judgment, the action shall not thereby abate, if the cause of action survive to the plaintiff or plaintiffs; and when there are two or more defendants, and one of them die, before final judgment, such action shall not thereby abate, but in either of such cases, such death shall be stated on the record, and the action shall proceed, at the suit of the surviving plaintiff, or against the surviving defendant.

SEC. 9. When there is but one plaintiff in an action, and he shall die before final judgment, such action shall not thereby abate, if the

cause of action survive to the heirs, devisees, executor or administrator of such plaintiff, but such of them as might prosecute the same cause of action, may continue such suit, by an order of the court, substituting them as plaintiff therein.

SEC. 10. When there is but one defendant in an action, and he shall die before final judgment, such action shall not thereby abate, if it might be originally prosecuted against the heirs, devisees, executor or administrator of such defendant, but such of them as might originally have been prosecuted, for the same cause of action, shall, on the application of the plaintiff, and by order of the court be substituted as defendants therein.

SEC. 11. If after a verdict shall be rendered in any action, either party die, before judgment actually entered thereon, the court may, at any time during the term at which such verdict was rendered, enter final judgment, in the names of the original parties.

SEC. 12. Nothing in the preceding section shall be construed to authorize the entry of the judgment against any party who may have died before a verdict actually rendered against him, notwithstanding he may have died on the first or any other day of the term at which such verdict may have been rendered, but such verdict shall be void.

SEC. 13. When any executor or administrator shall be plaintiff in any suit and shall die before final judgment, or cease to be such executor or administrator, the suit shall not thereby abate, but the same may be continued by the person succeeding him in the administration of the same estate, by an order of the court substituting the person so succeeding, as plaintiff in such suit.

SEC. 14. When any executor or administrator shall be defendant in any suit, and shall die before final judgment, or cease to be such executor or administrator, the suit shall not thereby abate, but the same may be continued against the person succeeding him in the administration of the same estate, by an order of the court substituting the person so succeeding as defendant therein.

SEC. 15. When an action is directed or authorized by law to be brought by, or in the name of a public officer, his death or removal from office, shall not abate the suit, if the cause of such suit survive to his successor, but the same may be continued in the name of such successor as plaintiff therein.

SEC. 16. All orders authorized by this act to be made, for the purpose of introducing into a suit a new person as a co-defendant with the original party, shall be made, either upon the voluntary appearance

of the party, or by order of court, after the party to be made such defendant, has been served with a scire facias; and all orders made for the purpose of substituting a person as defendant, in place of the original defendant, shall be made, either on the voluntary appearance of the party to be substituted, or after a service of a scire facias on said party; and all such writs of scire facias may be sued out, either in term time or in vacation, and may be directed to any county, and shall correspond, as near as practicable, to the original writ, and may be executed and returned in the same manner.

SEC. 17. No scire facias, for the purpose of substituting any person as defendant in any suit, in place of the original defendant, shall be sued out after the second day of the second term of the court, next after the term at which the death or disability of the original party shall be stated on the record.

SEC. 18. When any person is made co-plaintiff or co-defendant, or is substituted as plaintiff or defendant, in the place of the original party, in any of the cases for which provision is made in this act, such new party, shall, on his application, be entitled to a continuance of the suit, until the next term of the court, but nothing in this section contained, shall be so construed as to give the opposite party a right to a continuance of the suit, on account of such substitution.

SEC. 19. In all cases, where a person is made a co-plaintiff or co-defendant, or is substituted as plaintiff or defendant, in place of the original party, the suit shall proceed, in all respects, as if such person had been an original party in the suit.

[Approved: December 9, 1837.]

CHAPTER 2.

ACCOUNT.

SECTION
1. What persons shall account, and to whom.
2. Who may maintain action of, and against whom.
3. Executor being residuary legatee, and residuary legatee may maintain action of, and against whom.
4. When by and against executors and administrators.
5. Process in, and service, and return of.
6. Defendant summoned and not appearing, may be attached.
7. After judgment to account, auditors to be appointed, and how.
8. Powers and duties of auditors, where defendant fails to appear.
9. Powers and duties of, where defendant appears.
10. Auditors to report, and action of court upon report.
11. Jurisdiction in matters of account not taken from courts of chancery.

SEC. 1. When one or more joint tenants, tenants in common, or coparceners in any real estate, or any interest therein, shall take, use or have the profits and benefits thereof in greater proportion than his interest therein, such person, or his executor or administrator, shall account therefor to his or their co-tenant jointly or severally.

SEC. 2. Joint tenants, tenants in common and coparceners in any estate real or personal, may maintain actions of account against their co-tenants who receive as bailiffs more than their due proportion of the benefits of such estate.

SEC. 3. Any executor being a residuary legatee, may bring and maintain an action of account against his co-executor; and any other residuary legatee shall have the like remedy against executors or administrators.

SEC. 4. Actions of account may be maintained by and against executors and administrators in all cases in which the same might have been maintained by and against their testator or intestate.

SEC. 5. The original process in an action of account, shall be the same as is provided by law for other personal actions, and shall be served and returned in the same manner.

SEC. 6. When any person is liable to account as guardian, bailiff, receiver, or otherwise to another, and will not account, the party to whom such account ought to be made may bring his action of account, and if the person against whom such action may be brought, being summoned, does not appear at the return of the writ, the defendant may be attached by his body, to appear and render his account.

SEC. 7. Whenever a judgment shall be rendered against any defendant that he account, the court shall appoint not more than five nor less than three judicious and disinterested persons as auditors to take the account, who shall, before they enter on their duties, take an oath faithfully and impartially to take and state the account between the parties and make report to the court.

SEC. 8. Such auditors, or a majority of them, shall have power to appoint the time and place for the hearing of the parties, and shall give them reasonable notice thereof; and if the defendant shall neglect or refuse to attend at the time and place appointed and render his account, the auditors shall receive the statement of the account from the plaintiff and award to him the whole sum he claims to be due.

SEC. 9. If the parties appear and produce their books and accounts before the auditors, a majority of them shall proceed to state and take the account between the parties, and may take the testimony of wit-

nesses and examine either or both of the parties on oath respecting their accounts, and may administer all necessary oaths to parties and witnesses; and if either party shall refuse to be sworn, or answer proper questions respecting his accounts, the auditors, or a majority of them, may commit the party, so refusing to be sworn or answer, to jail, there to remain till he shall consent to be sworn or answer interrogatories.

SEC. 10. The auditors, or a majority of them, shall report to the court by which they were appointed at the next term of said court after their appointment, and if such report be approved by the court, judgment shall be rendered for the amount ascertained to be due, together with costs of suit.

SEC. 11. Nothing in this act contained shall be so construed as to deprive courts of chancery of their jurisdiction in matters of account.

[Approved: November 29, 1837.]

CHAPTER 3.

ADDRESS.

SECTION

1. Formal charges to be preferred by both houses of the General Assembly, and how.
2. Charges concurred in by both houses, to be entered on the journals of each, and day of trial how fixed.
3. Notice of trial and charges, how to issue and be served.
4. How served when party not found.
5. Managers to be appointed to prosecute, and how.
6. How subpœnas may issue, and depositions be taken.
7. Accused, how to answer, and when.
8. Proceedings upon his failure to respond.
9. How different day may be set for trial.
10. On day of trial, houses to assemble in joint meeting.

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11. Seats to be provided for accused and his counsel.
12. Testimony and arguments to be heard.
13. Questions arising on trial, how to be decided.
14. Each house to determine separately upon the charges, and vote how taken.
15. Two thirds of each house concurring, either house may originate address.
16. Address, how amended, and transmitted to Governor.
17. When Governor shall inform the General Assembly of his decision thereon.
18. Record of such decision to be made in office of Secretary of State, and effect thereof.

SEC. 1. When either house of the General Assembly shall be satisfied that there is probable cause for proceeding against any judge of any of the courts in this State, or any other officer liable to be removed

from office by address, for any misdemeanor for which he may be removed from office by address of two thirds of both houses of the General Assembly, they shall cause formal charges and specifications to be transmitted to the other house, with the information on which they are founded, and such house shall proceed thereon as in joint resolutions, and may make such amendments, and prefer such additional charges and specifications, as may seem proper.

SEC. 2. When both houses concur in exhibiting charges, they shall be entered on the journals of each house, and the two houses shall by concurrent resolution fix a day for the trial.

SEC. 3. The President of the Senate shall immediately cause a notice of the time and place of trial, with a copy of the charges annexed, directed to the accused, signed by himself and attested by the Secretary of the Senate, to be served on the party accused, at least ten days before the day appointed for the trial, and such notice shall be served by the sergeant at arms, or by such special messenger as may be appointed by the Senate for that purpose, whose return shall be verified by affidavit.

SEC. 4. If the party charged cannot be found, the notice shall be served by leaving a copy of such notice and charges at his dwelling-house, or his usual place of abode, with some white person over fifteen years of age.

SEC. 5. When charges are exhibited as in this act specified, there shall be appointed, by a joint vote of the two houses, two or more competent managers to prosecute such charges.

SEC. 6. The presiding officer of either house may cause subpœnas to be issued for any witness, whose attendance may be required by the managers, the accused, or his counsel, and appoint commissioners to take depositions, when the witness is unable to attend from sickness or other infirmity, or where the witness is out of the limits of the State; and such depositions shall be taken in like manner, and the like notice given thereof, as in taking depositions to be read in courts of law.

SEC. 7. The party accused shall respond in writing to the charges against him, at least one day before the day of trial, and the managers, if they deem it necessary, shall reply thereto immediately.

SEC. 8. If the accused be served with notice and a copy of the charges, as required by this act, and does not respond, proceedings shall be had against him ex parte, unless further time be given him to respond.

SEC. 9. For good cause shown before or on the day of trial, a

different day may be appointed by a concurrent vote of both houses, not beyond the session of the General Assembly.

SEC. 10. On the day appointed for the trial, the two houses shall assemble in joint meeting, in the hall of the House of Representatives, and proceed to the trial.

SEC. 11. When the two houses shall be thus assembled, convenient seats shall be provided for the accused and his counsel.

SEC. 12. The two houses shall hear the testimony for and against the accused, and the arguments of the managers, and the counsel of the accused, in joint meeting.

SEC. 13. If any question shall arise during the trial in relation to the competency of any witness, the admissibility of any testimony, or otherwise, the same shall be determined by the concurrent vote of the two houses, in which case the vote of the House of Representatives shall be first taken, after which, the vote of the Senate, and if there be a difference of opinion between the two houses on any point, the decision shall be in favor of the accused; and in case either house be equally divided, the presiding officer of that house shall give the casting vote.

SEC. 14. After the two houses shall in joint meeting have heard all the testimony adduced, and the arguments on both sides, each house shall proceed to determine separately, whether the accused be guilty of the several charges and specifications exhibited against him, and shall vote on each charge separately, and by yeas and nays.

SEC. 15. If two thirds of each house shall concur in finding the accused guilty of any of the charges or specifications, either house may originate an address to the Governor setting forth the charges and specifications of which the accused was found guilty, and praying his removal.

SEC. 16. Such address may be amended by the other house as joint resolutions, and if two thirds of each house concur in passing such address, it shall be immediately transmitted to the Governor.

SEC. 17. The Governor shall, within five days after receiving any such address, communicate his decision and proceedings thereon to both houses, if the session shall continue so long, and if not, then before the end of the session.

SEC. 18. When the Governor shall remove any person from office in pursuance of such address, he shall cause an entry thereof to be made in the office of the Secretary of State, after which the commission and authority of the person so removed shall be vacated and revoked.

[Approved: February 21, 1838.]

CHAPTER 4.

ADMINISTRATION.

SECTION
1. *Letters*, by whom granted.
2. " where granted.
3. To whom not granted.
4. Of administration, to whom granted, and order of preference. Citation to issue to person entitled.
5. Such person not appearing, considered a renunciation.
6. In such case, and where renunciation filed in writing, letters to issue to next entitled.
7. Testamentary to whom granted.
8. If part, who are appointed executors, refuse to act, letters granted to the others.
9. All refusing, letters with will annexed, to whom granted.
10. During contest as to validity of will, or executor being a minor or absent from the State, letters granted, and duty of temporary administrator.
11. Affidavit of person applying for letters of administration, form of.
12. Where made, and of what other persons required.
13. Affidavit of executor and administrator with will annexed.
14. Bond of person applying for letters of administration, by whom taken, and in what penalty.
15. Form of condition thereof.
16. Similar bond to be given by executors, and all other administrators.
17. Who not permitted to be security in such bond, except by leave of court.
18. Duty of court or clerk as to taking security.
19. Clerk to record bonds, and present them to court for confirmation.
20. To record letters granted.
21. Penalty for delivering letters without recording them.
22. Copies of letters and bonds to be evidence.
23. Form of letters testamentary.

SECTION
24. " of letters of administration.
25. " of other letters to be similar.
26. Upon will found after letters of administration granted, letters revoked, and letters testamentary granted.
27. Upon will set aside, letters testamentary revoked, and of administration granted.
28. Executrix or administratrix marrying, her powers extinguished, and letters granted to another.
29. In what case letters may be revoked on complaint, and proceedings therein.
30. On affidavit, and on what showing, court may require additional or new security.
31. How far former securities released by filing such new bond.
32. On failure to give such new or additional security, letters revoked.
33. How executor or administrator may resign.
34. Not until he has accounted.
35. Surviving or remaining executors to continue to act.
36. On death, resignation or revocation of letters of all the executors or administrators, letters of administration *de bonis non* to be granted.
37. On death, resignation, &c., executor or administrator, or his legal representatives to account and pay over, and deliver up papers, &c., and obedience to order for so doing, how compelled.
38. Succeeding administrator, or remaining executor may proceed at law against delinquent and securities or other person having part of estate.
39. Limitation of suits against securities in executors' or administrators' bonds.
40. Executor or administrator failing to make settlement after citation, letters to be revoked.
41. Power of executor before probate and

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letters granted; and liability if letters refused.
42. Not to exempt him from penalty for waste or mismanagement.

INVENTORY.

43. *Executors and administrators*, to make out inventory.
44. Affidavit to be annexed thereto.
45. Inventory and affidavit to be filed, where and when.
46. Additional inventory, when to be filed.
47. On affidavit that any person has concealed or embezzled property of deceased, court to cause him to appear and be examined.
48. Not appearing, attendance compelled by attachment.
49. Refusing to answer, to be committed.
50. If convicted of such detainer, compelled to deliver up, by attachment.

APPRAISEMENT.

51. Appraisement of estate, and affidavit of of appraisers.
52. Appraisement list, how made and signed.
53. Appraisement list and affidavit to be filed, where and when.
54. Subsequent appraisements to be made and filed in same manner.
55. Compensation of appraisers.
56. Inventory and appraisement, effect of as evidence.

ADVERTISEMENT, &c.

57. Of notice of grant of letters.
58. Additional notice when heirs not known.
59. Actions founded on torts to the person or property, not to die with the person.
60. Not to include actions of slander or libel.
61. Debtor being appointed executor, debt not extinguished, but becomes assets.

WIDOW.

62. What property retained by widow, over and above her dower.
63. She may also take other personal property, not exceeding in value, one hundred and fifty dollars.
64. Within what time she must apply therefor.

SALES, &c.

65. What estate to be sold, when and on what terms.
66. Notice thereof, how and when given.

SECTION
67. When will of testator to govern as to sale.
68. Auctioneer and clerk to be appointed, and duty of clerk.
69. List of sales and affidavit of clerk to be filed.
70. Slaves to be hired out, and how.
71. When and how labor employed in tending crop, &c.

ASSETS.

72. Improvements on public lands, are assets.
73. Interest to be assets, and how accounted for.
74. Power of court as to interest on money loaned by executor or administrator.
75. Disposition to be made by court of surplus money.
76. Court to examine inventories and sale bills, and issue citations for delinquents.
77. Power of executors and administrators to assign notes and bonds.
78. Power of, to give receipts and discharges.
79. To be liable for nett proceeds of sale of personal property.

DEMANDS AGAINST ESTATES.

80. How classed, and when barred.
81. Actions pending at time of death, how classed.
82. Actions commenced against executor or administrator, how classed.
83. Other demands, how exhibited.
84. If executor or administrator is satisfied the claim is just, approval and allowance to be endorsed.
85. To keep list of claims so exhibited, and return it to court, when.
86. Proceedings on claim approved and allowed as in section 84.
87. Affidavit to be made by creditor before any payment to be made.
88. Who to make affidavit, in case of debt due a corporation.
89. Requisites of such affidavit, when made by officer of corporation, executor, administrator or assignee.
90. When debt assigned after debtor's death, affidavit, by whom to be made.
91. If no affidavit filed before commencement of action, nonsuit to be entered.

SECTION
92. In suit brought without presenting such affidavit to executor or administrator, and suit not contested, plaintiff to pay costs.
93. Such affidavit, before whom taken, and how authenticated.
94. Persons swearing falsely in such affidavit, guilty of perjury.
95. Executor or administrator refusing to allow claim, it may be presented to court of probate, after notice.
96. Proceedings in such court thereon.
97. Affidavit required before allowance.
98. Affidavit not to be evidence of the demand.
99. Demand not to be presented to court, till after refusal by executor or administrator, and in such case, if allowed, claimant to have his costs.
100. Rules of pleading and evidence therein.
101. Where jury called, and where not.
102. Demands of executor or administrator how allowed, and affidavit required.
103. Abstract of allowances to be kept by clerk.
104. Demands, in what order and how paid.

SETTLEMENTS.

105. When made, and in what manner.
106. Court to examine account, and what compensation to be allowed executor or administrator.
107. Account to be examined, and if approved and confirmed, to be recorded.
108. Such account always to be continued to next term without action thereon.
109. Exceptions to such account, when to be filed. If not filed and account confirmed, only impeached afterwards in chancery.
110. Clerk to give notice after each term, by advertisement, of all such accounts filed, &c.
111. Exceptions filed, when to be determined.
112. Account and exceptions may be referred to an auditor, and his duties.
113. Testimony to be examined, and account re-stated, if incorrect.
114. Auditor, when to report, and exceptions to his report allowed.
115. Account when corrected, to be confirmed and recorded.

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116. Clerk to keep docket, and publish it in his office.
117. On failure to present account for settlement, citation to issue.
118. Alias citation may issue and be served or published — and no cause being shown, penalty of delinquent for not settling.
119. Power of court to compel settlement, &c., by attachment, &c.
120. Delinquent to pay costs of citation or attachment.
121. Apportionment, when ordered upon settlement.
122. And court to order claims to be paid.
123. If assets enough to pay claims of one class, all such claims to be paid.
124. When execution to issue after demand.
125. If not satisfied, scire facias to run against securities.
126. Proceedings and judgment thereon.

DISTRIBUTION.

127. What time allowed for payment of legacies, or distribution.
128. Not compelled to pay legacies or distributive shares until two years from date of letters except on order of court, and bond given.
129. Widow not required to give bond.
130. Whenever it appears to the court that there are assets sufficient to pay all demands, what order to be made.
131. Payment of legacies or distributive shares, how compelled.
132. When slaves to be sold, and money distributed.
133. Persons entitled to distribution to be notified of application for such sale, and how.
134. On order for sale, court to settle shares of distributees.
135. Distributee purchasing, his share how arranged.
136. Share of widow, when real estate sold instead of slaves.

REFUNDING.

137. Court to apportion amount to be refunded.
138. Judgment against persons failing to refund upon order.
139. What amount to be paid to widow till dower apportioned.
140. In what cases court may order admin-

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istration to cease, and estate to be delivered to widow.
141. Shares not called for, may be ordered to be loaned out.
142. Executor or administrator not responsible on insolvency of person to whom loaned and his security.
143. Executor or administrator, how to proceed in order to discharge himself of the estate.

SALE OF REAL ESTATE.

144. *Lands and tenements*, by whom sold under will.
145. To be assets.
146. In what case and how, application to be made for sale of real estate.
147. Petition for, to be verified by affidavit.
148. When court may order such sale.
149. Court to fix time and place of sale, and order notice to be given.
150. To specify length of credit and security to be taken.
151. Returns of sale, and affidavit of executor or administrator.
152. Deeds for land so sold, how executed, &c.
153. Rights of purchaser under such deed.
154. Notice must have been given previous to sale, and how.
155. Proceedings to reserve slaves and sell real estate.
156. Real estate to be appraised before sale.
157. Affidavit to be taken by appraisers.
158. Appraisement, how made out and filed.
159. When lands, &c., to be reserved from sale.
160. On failure to sell, report to be made, and new order of sale.
161. Lands purchased by deceased and not paid for, &c., proceedings as to.
162. Proceedings as to mortgages or pledges made by, and equity of redemption possessed by deceased.

SECTION
163. Deed to be made when interest of deceased sold in such cases.

WILD STOCK.

164. How wild stock may be sold.
165. Notice of such sale.
166. Returns of such sales.

SPECIFIC EXECUTION, &c.

167. Of inchoate contracts of deceased, proceedings to obtain.
168. Decree therefor, effect of, and how set aside.
169. Deed to be made in such case, and decree how enforced.
170. Moneys arising from such decree, how accounted for.

LIABILITY OF EXECUTOR AND ADMINISTRATOR.

171. Proceedings in suits on bond of.
172. How far liable for non-pleading or mispleading.
173. How far liable on judgments against goods, &c., of the deceased.

ATTORNEYS.

174. Compensation of, when employed to collect.
175. Compensation when employed to defend.
176. Attorneys' fees how paid.

APPEALS.

177. In what cases allowed to circuit court.
178. When applied for and granted.
179. In all other cases, decision of probate court to be final, unless fraud shown.
180. Bills of exceptions, how taken.
181. Transcripts to be sent up.
182. Proceedings on appeal, in circuit court.
183. Judgment and decision of circuit court to be certified to court of probate, and there how proceeded on.
184. Affidavit required upon appeal taken, and appeal to operate as supersedeas.
185. Final settlement, when to be made.

SEC. 1. It shall be the duty of the Courts of Probate, in the several counties of this State, in term time, or the Clerks thereof in vacation, subject to the confirmation or rejection of the Court, to grant letters testamentary and of administration.

SEC. 2. Letters testamentary and of administration shall be granted in the county in which the testator or intestate resided; or, if he had

no known residence, and lands be devised in the will or the intestate die possessed of lands, such letters shall be granted in the county where the lands lie, or one of them if they lie in several counties; and if the deceased had no such place of residence and no lands, such letters may be granted in the county in which the testator or intestate died, or where the greater part of his estate may be.

SEC. 3. Letters testamentary or of administration shall in no case be granted to a Clerk of the Court of Probate, or his deputy, to a person of unsound mind, under the age of twentyone years, or to a married woman; nor shall an executor of an executor in consequence thereof be the executor of the first testator.

SEC. 4. Letters of administration shall be granted to the representatives of the intestate who may apply for the same and are qualified, preferring first the husband or wife, or one of the persons entitled by law to a distribution of the intestate's estate, as the Court or Clerk may be of the opinion will best manage and improve the estate; and if no such person applies for letters within thirty days after the death of the intestate, letters of administration may be granted to any creditor of the intestate who may apply for the same within sixty days after the death of the intestate, or to such other person as the Court may appoint; and the Court, or Clerk thereof in vacation, on the application of any person interested, may issue a citation to any person entitled to administration as aforesaid, calling on him to take out letters of administration.

SEC. 5. If such person shall neglect to appear and take out letters within ten days after the service of such citation, such neglect shall be considered as a renunciation by such person of the administration.

SEC. 6. In such case, and all others where the person entitled to administration shall file his renunciation thereof in writing with the Clerk of the Court of Probate of the proper county, letters of administration shall be granted to the person next entitled thereto.

SEC. 7. After the probate of any will, letters testamentary shall be granted to the person therein appointed executor, if qualified.

SEC. 8. If there are more persons than one named as executors in any will, and a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein.

SEC. 9. If all such persons refuse to act, or be disqualified, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will.

SEC. 10. If the validity of any will be contested, or the executor be a minor, or absent from the State, letters of administration shall be granted during the time of such contest, minority or absence, to some other person, who shall take charge of the property and administer the same according to law under the direction of the Court, and account for, pay and deliver all moneys and property of the estate to the executor or regular administrator, when qualified to act.

SEC. 11. Every person applying for letters of administration shall, at the time of making such application, make and subscribe an affidavit, stating, to the best of his knowledge and belief, the value of the estate, the names and residence of the heirs of the deceased, if known, that the deceased died without a will, that he will make a perfect inventory of, and faithfully administer, all and singular, the goods and chattels, rights and credits of the deceased, and pay his debts, as far as the assets which may come to his hands will extend and the law direct, and that he will account for, and pay over according to law, all assets which shall come to his hands or possession.

SEC. 12. Such affidavit shall be made in open court, or before the Clerk in vacation; and a similar affidavit, with such variations as the case may require, shall be made by every administrator *de bonis non*, and by an administrator during the contest about a will or the minority or absence of an executor.

SEC. 13. Every administrator with the will annexed, and executor, at the time letters are granted to him, shall make and subscribe an affidavit that he will make a true and perfect inventory of the estate and faithfully execute the last will of the testator, pay the debts and legacies, as far as the assets will extend and the law direct, render just accounts of his administration, and faithfully perform all things required by law touching such administration or executorship.

SEC. 14. The Court of Probate, or the Clerk thereof in vacation, subject to the approval or rejection of the Court in term time, shall take a bond from the person to whom letters of administration are granted, with two or more sufficient securities, residents of the county, to the State of Arkansas, in such sum as the Court, or Clerk, shall deem sufficient, not less than double the amount of the estimated value of the estate.

SEC. 15. Such bond shall be conditioned as follows: "The condition of the above obligation is such that if the above bounden A. B., administrator of all and singular the goods and chattels, rights and credits of C. D. deceased, shall make or cause to be made a true and

perfect inventory of all and singular the goods and chattels, rights and credits of the deceased which have or may come to the hands, possession or knowledge of him the said A. B., or into the hands or possession of any other person for him, and the same so made, shall return and exhibit in the office of the Clerk of the Court of Probate for the county of ——, within sixty days from the date of the above obligation, and all and singular the goods and chattels, rights and credits of the deceased, which shall come to the hands, possession or knowledge of him the said A. B., he shall well and truly administer according to law, and pay the debts of the deceased, as far as his assets will extend and the law direct; and, further, make or cause to be made just and true accounts of his administration, and make due and proper settlement thereof from time to time according to law or the lawful order, sentence or decree of any court having competent jurisdiction, and shall moreover well and truly do and perform all other matters and things touching such administration that are or may be prescribed by law or enjoined on such administrator by the lawful order, sentence or decree of any court having competent jurisdiction, then the above obligation to be void and of no effect, otherwise to remain in full force and virtue."

SEC. 16. A similar bond, with such variations as the case may require, shall be given by all executors and administrators with the will annexed, or of the goods, chattels and effects remaining unadministered during the time of a contest about any will, or of the minority or absence of an executor.

SEC. 17. No sheriff, clerk of any court, or the deputy of either or attorney at law, shall be taken as security in the bond of any executor or administrator unless by special permission of the Court of Probate, and such permission shall be entered on the record of said Court.

SEC. 18. The Court of Probate, or the Clerk thereof in vacation, shall take special care to take as securities persons who are solvent and sufficient, and who are not bound in too many other bonds; and the Court or Clerk may take testimony or examine on oath the applicant, or the persons offered as securities, in order to be satisfied of their solvency.

SEC. 19. The Clerk of the Court of Probate shall record in a well bound book to be kept for that purpose all bonds given by executors and administrators, and present all such bonds as may have been taken in vacation to the Court at the first term after the taking of the same, for confirmation, and an entry shall be made in the record of such Court of the confirmation or rejection of any such bond.

SEC. 20. It shall also be the duty of such Clerk to record in a book to be kept for that purpose all letters testamentary and of administration granted by the Court in term time, or such Clerk in vacation.

SEC. 21. If any Clerk of the Probate Court shall deliver any letters testamentary or of administration to any executor or administrator without recording the same, he may be fined by the Court in any sum not exceeding one hundred dollars.

SEC. 22. Copies of such letters testamentary or of administration and the official bonds given by executors or administrators, legally authenticated, shall be evidence in the same manner as the originals.

SEC. 23. All letters testamentary to be issued to executors under the provisions of this act shall be in the following form: "County of ——, ss. The State of Arkansas to all persons to whom these presents shall come, greeting: Know ye that the last will and testament of A. B. of ——, deceased, hath in due form of law been exhibited, proved and recorded in the office of the Clerk of the Court of Probate for —— county, a copy of which is hereunto annexed; and inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator; We do hereby authorize him the said C. D. as such executor to collect and secure all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his death, in whosesoever hands or possession the same may be found; and to perform and fulfil all such duties as may be enjoined upon him by said will, so far as there shall be property and the law charge him; and in general to do and perform all other acts which now are or hereafter may be required of him by law.

"In testimony whereof, I, A. B., Clerk of the Circuit Court and *ex officio* Clerk of the Court of Probate in and for the said county of ——, have hereunto set my hand and affixed the seal of said Court, at office in ——, this —— day of ——, A. D. 18—.

A. B. *Clerk.*"

SEC. 24. Letters of administration hereafter to be issued in this State shall be in the following form: "County of ——, ss. The State of Arkansas to all persons to whom these presents shall come, greeting: Know ye that whereas A. B. of the county of —— died intestate, as it is said, on or about the —— day of ——, A. D. 18—,

having at the time of his death personal property in this State, which may be lost, destroyed or diminished in value if speedy care be not taken of the same: to the end therefore that the said property may be collected, preserved and disposed of according to law, we do hereby appoint C. D. of the county of ——, administrator of all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of the said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law.

"In testimony whereof, I, A. B., Clerk of the Circuit Court and *ex officio* Clerk of the Court of Probate in and for the county of, —— aforesaid, have hereunto set my hand and affixed the seal of said Court, at office, this —— day of ——, A. D. 18—. A. B. *Clerk.*"

SEC. 25. In all cases where letters of administration with the will annexed, letters of administration *de bonis non*, during minority, or absence, shall hereafter be issued by any Court of Probate, or the Clerk thereof in vacation, the same shall be issued in conformity with the foregoing forms, as near as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case.

SEC. 26. If after letters of administration are granted, a will of the deceased be found and probate thereof be made, such letters shall be revoked by the Court of Probate, and letters testamentary or of administration with the will annexed be granted.

SEC. 27. If any will be proved and letters testamentary thereon granted, and such will be afterwards set aside, the letters testamentary shall be revoked and letters of administration *de bonis non* granted.

SEC. 28. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of the testator or intestate other than his wife's part, nor shall the administration thereof devolve on him, but such marriage shall extinguish her powers, and her letters shall be revoked and letters of administration with the will annexed, or *de bonis non*, shall be granted to some person entitled thereto, or such person as the Court may deem most suitable.

SEC. 29. If any executor or administrator shall become of unsound mind, or waste or mismanage the estate, or act so as to endanger his co-executor, the Court of Probate, upon complaint in writing made by any person interested, supported by affidavit, and fifteen days' previous notice of the time and place of hearing such complaint having been

given to the person complained of, shall hear such complaint, and if it be found just the letters shall be revoked.

SEC. 30. If any heir, legatee, creditor or security, or other person interested in any estate, shall file in the Court of Probate, of the proper county, an affidavit stating that the affiant has reason to believe that any security in the executor's or administrator's bond has become or is likely to become insolvent, or has died, or has removed from the State, or that the principal in such bond has become or is likely to become insolvent, or is wasting the estate, or that the penalty of such bond is insufficient, or that such bond has not been taken according to law; and shall have given the principal in such bond fifteen days' notice of the time and place of hearing such complaint, the court shall examine the same, and make such order as shall seem proper.

SEC. 31. If an addititional bond be given and approved, it shall discharge the former securities from any liability from the misconduct of the principal after the filing such additional bond; and such former securities shall only be liable for such misconduct as happened prior to giving the new bond.

SEC. 32. If such person shall fail to give such additional security as may be required by the court within ten days after the making of the order requiring additional security, his letters shall from thenceforth be revoked and his authority from that time cease.

SEC. 33. If any executor or administrator shall make application to the Court of Probate to resign his administration, it shall be the duty of said court to examine such application, and if it should be of opinion that no material injury will result to the estate in consequence of such resignation, to make an order accepting the resignation of such executor or administrator, and from that time all his powers shall cease.

SEC. 34. The Court of Probate shall in no case accept the resignation of any executor or administrator until he shall have exhibited to such court his accounts as far as he may have proceeded in such administration.

SEC. 35. If there be more than one executor of any estate, and the letters of part of them be revoked or surrendered, or part die, those who remain shall discharge all the duties required by law touching such estate.

SEC. 36. If all the executors or administrators of any estate die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration *de bonis non* shall be granted to the person to whom administration would have been granted if the original letters

had not been obtained or the person obtaining them had renounced the administration, or to such other person as may be appointed by the court; and such administrator shall perform the like duties and incur the like liabilities as the former executor or administrator.

SEC. 37. If any executor or administrator die or resign, or his letters be revoked, he or his legal representatives shall account for, pay and deliver to his successor or the surviving or remaining executor all money and personal property and all the rights, credits, deeds, evidences of debts, and papers of any kind, belonging to the estate of the deceased at such time and in such manner as the court shall order; and such court in case of a refusal to comply with such order shall have power to enforce the same by attachment.

SEC. 38. The succeeding administrator or the remaining executor may proceed at law against the delinquent and his securities or either of them or any other person having in his possession any part of the estate.

SEC. 39. All suits against securities in any executor's or administrator's bond shall be commenced within four years after the date thereof and not after.

SEC. 40. If any executor or administrator shall fail to make settlement as required by law and shall not show good cause for such failure, the Court of Probate after the service of a citation on the delinquent may revoke his letters.

SEC. 41. The power of the executor over the testator's estate before probate of the will and obtaining letters testamentary shall extend to the burial of the deceased in a manner suitable to his condition, the payment of the necessary funeral expenses, and the taking care of the estate; but in such cases if the will shall be rejected when presented for probate, and such executor never qualify, he shall not be liable as an executor of his own wrong, unless he refuse to deliver up the estate to the person authorized to receive the same.

SEC. 42. The preceding section shall not be so construed as to exempt any person claiming to be executor as aforesaid from liability for any waste or mismanagement of such estate.

SEC. 43. It shall be the duty of every executor and administrator immediately after receiving his letters to collect and take into possession the goods and chattels, moneys, books, papers and evidences of debts, of the testator or intestate, except the property reserved by this act as the absolute property of the widow; and he shall make a true and perfect inventory thereof, describing the books and papers, the

debts due or to become due to the deceased, the names of the debtors, the date of the contract, the amount of interest due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate.

SEC. 44. Each executor or administrator shall annex to such inventory an affidavit stating that it is a full inventory and description of all the moneys, goods, chattels, books, papers and evidences of debt, and of all debts due or becoming due, as far as he has been able to ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

SEC. 45. Such inventory and affidavit shall be filed in the office of the Clerk of the Court of Probate within sixty days after the letters are granted.

SEC. 46. If, after making the first inventory, any other personal property shall come to the possession or knowledge of the executor or administrator, he shall file an additional inventory similar to the inventory required by the preceding provisions of this act.

SEC. 47. If any executor or administrator or other person interested in any estate, shall file in the Court of Probate an affidavit stating that the affiant has good cause to believe that any person in such affidavit named has concealed or embezzled any goods, chattels, moneys, books, papers or evidences of debt, of the deceased, the court shall have power to cause such person to appear before it and examine him on oath for the discovery of the same.

SEC. 48. If the person so cited shall fail to appear, the court shall have power to compel his attendance by attachment.

SEC. 49. If such person shall, after his appearance, refuse to answer proper interrogatories, the court may commit him to jail until he answer or be otherwise discharged according to law.

SEC. 50. If any such person shall be convicted of unlawfully detaining any such goods, chattels, moneys, effects, books, papers or evidences of debt, the court may compel the delivery thereof to the executor or administrator entitled to receive the same by attachment.

SEC. 51. It shall be the duty of every executor and administrator immediately after having the personal estate of the deceased collected, to cause the same to be appraised by three disinterested householders of the county, who, before entering on their duties, shall make an affidavit that they are not interested nor of kin to any person interested in the estate as heir or legatee, and that they will according to the best

of their abilities view and appraise the slaves and other personal property to them produced.

SEC. 52. Such appraisers shall view and appraise such property, and make a list thereof, specifying each article appraised and its value, and showing the total amount of the appraisement, which shall be signed by the appraisers or any two of them.

SEC. 53. Such appraisement and the affidavit of the appraisers shall be filed in the office of the Clerk of the Court of Probate within sixty days after letters are granted.

SEC. 54. Every executor or administrator shall cause similar appraisements to be made and filed of all personal estate which shall come to his possession after the first appraisement.

SEC. 55. Each appraiser shall be entitled to receive for his services the sum of one dollar for each day he may be engaged in appraising any estate, to be allowed as expenses of administration.

SEC. 56. The inventories and appraisements may be given in evidence, but shall not be conclusive for or against the executor or administrator; other evidence may be admitted to vary the effect thereof.

SEC. 57. Within thirty days after letters testamentary or of administration are granted on any estate, the executor or administrator shall advertise at the court house door for six weeks, and if ordered by the probate court shall publish in some newspaper printed in this State for six weeks, a notice that letters testamentary or of administration have been granted to him, stating the date thereof, and requiring all persons having claims against the estate to exhibit the same to the executor or administrator, properly authenticated, within one year after the date of such letters, or they may be precluded from any benefit in the estate, and that if such claims be not exhibited within two years from the date of such letters, they shall be forever barred and precluded from any benefit from such estate.

SEC. 58. When any intestate has left no known heirs, the administrator shall, in addition to the notice required in the preceding section, publish a notice for six weeks, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity, if known, and the appraised value of his estate.

SEC. 59. For wrongs done to the person or property of another, an action may be maintained against the wrong-doers, and such action may be brought by the person injured, or after his death by his executor or administrator, against such wrong-doer, or after his death

against his executor or administrator, in the same manner and with like effect in all respects as actions founded on contracts.

SEC. 60. Nothing in the preceding section shall be so construed as to extend its provisions to actions of slander or libel.

SEC. 61. If any person shall appoint his debtor executor of his last will and testament, such appointment shall not extinguish the debt, but it shall be assets in his hands.

SEC. 62. In addition to dower, a widow shall be allowed to keep as her absolute property all the wearing apparel of the family, her wheels, looms and other implements of industry; all yarn, cloth, and clothing, made up in the family for their own use, such grain, meat, vegetables, groceries, and other provisions on hand, as may be necessary for the subsistence of the widow and her family for twelve months, and as many beds, with bedding, and such other household and kitchen furniture, as shall be necessary for herself and the family of the deceased, residing with her, and under her control; nor shall any property acquired by the widow, be sold to pay any debts of her husband's contracted before marriage, nor shall such property be embraced in the schedule of the effects of his estate, should the same be deemed insolvent.

SEC. 63. In addition to the property specified in the preceding section, the widow, when the estate is not insolvent, may take such personal property as she may wish, not to exceed the appraised value of one hundred and fifty dollars, and the executor or administrator shall deliver to the widow such articles as she may select, not exceeding the value aforesaid, and shall take her receipt therefor which shall be a good voucher in the settlement of his accounts.

SEC. 64. The widow shall apply for such property before it is distributed or sold, and not after.

SEC. 65. Every executor or administrator, as soon as practicable after the appraisement, shall sell at public sale all the personal estate of the deceased except slaves and specific bequests, giving such credit as he may deem most advantageous to the estate, not exceeding twelve months, and taking bonds or notes with good and sufficient security from the purchaser.

SEC. 66. Every executor or administrator shall give notice of the time and place of such sale, by advertisements put up in five of the most public places in the county at least twenty days before the day of such sale.

SEC. 67. If any testator direct his personal estate not to be sold,

the same shall be reserved from sale, unless such sale be necessary for the payment of debts.

SEC. 68. At every public sale the executor or administrator shall employ a competent auctioneer, and a clerk not interested in the estate, nor of kin to any heir or legatee of the estate; and such clerk shall keep a true account of the sales made, make a list of sales, specifying each article sold, the price for which it was sold, and the name of the purchaser, and shall annex to such list an affidavit, stating that the same is a true account of the sales made by such executor or administrator at the time specified.

SEC. 69. Such list of sales with the affidavit of the clerk annexed thereto shall be filed in the office of the Clerk of the Court of Probate within thirty days after such sale.

SEC. 70. Executors and administrators, under the direction of the Court of Probate, shall hire out slaves for any period not exceeding one year, and shall receive and account for the hire or wages; and all slaves shall be hired to the highest bidder, at the court house door of the county, unless the court shall order the hiring to be at some other place.

SEC. 71. If any person die leaving a crop ungathered, or in an unfinished state, so that the estate would suffer loss from the want of care and additional labor, the executor or administrator may, until the meeting of the Court of Probate, procure such labor to be performed as may be indispensable to the saving such crop, and the Court of Probate may in such cases authorize such further labor to be performed, as the interest of the estate may require, and all sums of money paid for any such labor, if approved by the court, shall be allowed as expenses of administration.

SEC. 72. All improvements made on the public lands of the United States by a testator or intestate, shall be assets in the hands of the executor or administrator, unless the same may have been disposed of by will.

SEC. 73. All interests received by executors and administrators shall be assets in their hands; and if they lend the money of the deceased, or use it for their private purposes, they shall be chargeable with interest thereon for the use of the estate.

SEC. 74. The Court of Probate shall exercise equitable control in making executors and administrators accountable for interest accruing to the estate on account of money loaned by them belonging to the

estate or otherwise, and for that purpose may take testimony or examine the executor or administrator on oath.

SEC. 75. If on the return of any inventory or at any other time it shall appear to the satisfaction of the Court of Probate that there is a surplus of money in the hands of any executor or administrator that will not shortly be required for the expenses of administration or the payment of debts, such court shall have discretionary power to order the executor or administrator to lend out such money on such time and on such security as may be approved by the court, or to deposit the same in the Bank of the State of Arkansas, as may seem best for the interest of the estate.

SEC. 76. It shall be the duty of the Court of Probate at each term thereof to examine all inventories and sale bills filed since the last term of such court, to see if they have been made and filed according to law, and to cause citations to be issued to compel all delinquents to comply with the law.

SEC. 77. Executors and administrators may assign the notes and bonds belonging to the estate, to creditors, legatees, and distributees, in discharge of such amount of their claims, as will be equal to the amount of notes or bonds assigned.

SEC. 78. All executors and administrators, may give receipts, and discharges for money received by them on account of the deceased; but if there be more than one executor, a majority shall join in such receipt or discharge, or it shall be void.

SEC. 79. Every executor or administrator, on settling his accounts, shall be charged with, and be accountable for, the net proceeds of the sale of all personal property, sold by him under the provisions of this act, notwithstanding the same may amount to more or less than the appraised value thereof.

SEC. 80. All demands against the estate of any deceased person, shall be divided into the following classes: First, funeral expenses; second, expenses of the last sickness, wages of servants, and demands for medicines, and medical attendance during the last sickness; third, judgments rendered against the deceased in his life time, and which are liens on the lands of the deceased, if he died possessed of any, otherwise to be regarded as debts due by contract; fourth, all demands, without regard to quality, which shall be exhibited to the executor or administrator, properly authenticated, within one year after the first granting of letters on the estate; fifth, all such demands as may be exhibited as aforesaid, after the end of one year, and within

two years after the first letters granted on the estate ; and all demands not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting of the letters, shall be forever barred.

SEC. 81. All actions pending against any person at the time of his death, which, by law, survive against the executor or administrator, shall be considered demands legally exhibited against such estate, from the time such action shall be revived, and shall be classed accordingly.

SEC. 82. All actions, commenced against any executor, or administrator, after the death of the testator or intestate, shall be considered demands legally exhibited against such estate, from the time of serving the original process on the executor or administrator, and shall be classed accordingly.

SEC. 83. Any person may exhibit his demand against any estate, by serving on the executor or administrator, a notice in writing, stating the nature and amount of his claim, with a copy of the instrument of writing, or account upon which the claim is founded, together with a copy of the probate of such claim, and shall, at the same time, exhibit the original.

SEC. 84. If the executor or administrator, shall be satisfied that the claim thus exhibited against the estate of his testator or intestate is just, he shall endorse thereon his approval and allowance of the same, and the time it was exhibited.

SEC. 85. Every executor and administrator shall keep a list of all demands legally exhibited against the estate of his testator or intestate, and class the same, and make return of such list to the Court of Probate, every year, at the term at which he is required to make settlement.

SEC. 86. It shall be the duty of every person having claims against the estate of any deceased person, after having exhibited his claim to the executor or administrator, as required by this act, and after the same has been approved and allowed by him, to file the same, together with a copy of the notice served on the executor or administrator, in the office of the Clerk of the Court of Probate ; and said clerk shall, at the next term of the court after the filing of any such claim, present the same to the court for classification ; and the clerk shall note the same on his record, stating the name of the claimant, and against whose estate the same is exhibited, the amount thereof, its class, and the date of filing the same.

SEC. 87. Before any executor or administrator shall pay or allow

any debt demanded as due from the deceased, founded on any judgment, decree, bond, note, bill or account, the person claiming such debt shall make an affidavit, "that nothing has been paid or delivered towards the satisfaction of such debt, except what is mentioned or credited, and that the sum demanded is justly due."

SEC. 88. In case of a debt due a corporation, the cashier or treasurer, shall make the affidavit required by the preceding section.

SEC. 89. When an affidavit shall be required to be made by an officer of a corporation, executor, administrator or assignee, it shall be sufficient to state in such affidavit, "that he has made diligent inquiry and examination, and that he does verily believe that nothing has been paid, except the amount credited, and that the sum demanded is justly due."

SEC. 90. If the debt be assigned after the debtor's death, affidavit shall be made by the person who held the debt at the death of the debtor, as well as the assignee.

SEC. 91. If any affidavit as required by this act, for authenticating claims against deceased persons, be not produced in an action against an executor or administrator, for a debt against the deceased, the court shall, on motion, enter a judgment of nonsuit against the plaintiff; and the affidavit must appear to have been made prior to the commencement of the action.

SEC. 92. If suit be brought for any debt due from a deceased person, without exhibiting to the executor or administrator an affidavit, made pursuant to this act, and if such suit be not controverted, the court shall enter judgment against the plaintiff for costs.

SEC. 93. Any Judge, Justice of the Peace, or Notary Public of this State, shall have power to take the affidavits required by this act, to authenticate any claim against a deceased person; and an affidavit taken out of the State, if the official character of the person, before whom such affidavit may have been made, shall appear from the certificate of a clerk of any court of record, under his official seal, shall be received.

SEC. 94. If any person in taking an affidavit as required by this act to authenticate a claim against any deceased person, shall take a wilful and false oath, such person shall be deemed guilty of wilful and corrupt perjury, and shall suffer the pains and penalties thereof.

SEC. 95. If any executor or administrator shall refuse to allow any claim or demand against the deceased, after the same may have been exhibited to him in accordance with the provisions of this act,

such claimant may present his claim to the Court of Probate for allowance, giving the executor or administrator ten days' notice of such application to the court.

SEC. 96. The Court of Probate shall have power to hear and determine all demands against any estate made agreeably to the provisions of this act, and cause a concise entry of the order of allowance to be made on the record, which shall have the same force and effect as a judgment.

SEC. 97. No demand shall be allowed by the Court of Probate, against any estate, unless the claimant shall make oath, in open court, "that he has given the estate credit, for all payments, and offsets to which it is entitled, and that the balance claimed is justly due.

SEC. 98. Such affidavit shall not be received as evidence of the demand, but the same shall be established by competent and legal testimony, before it shall be allowed.

SEC. 99. No demand against any estate shall be presented to the Court of Probate for allowance, until after the executor shall have refused to allow and class the same; and in all such cases, if the claimant be allowed his claim by the court, he shall be entitled to his costs.

SEC. 100. The Court of Probate shall hear and determine all demands presented for allowance under this act, in a summary manner, without the forms of pleading; and in taking testimony shall be governed by the rules of law in such cases made and provided.

SEC. 101. If any demand presented to the Court of Probate for allowance, does not exceed twenty dollars, or if neither party require a jury where the amount claimed exceeds twenty dollars, the Court of Probate shall decide the validity of the claim, and allow or disallow it; but if either party require a jury where the sum demanded exceeds twenty dollars, the court shall direct a jury to be forthwith summoned to try such demand, and the trial shall be conducted as in other cases of jury trials.

SEC. 102. An executor or administrator may establish any demand he may have against his testator or intestate, by presenting and proving the same, to the satisfaction of the Court of Probate; and such court shall not allow any claim in favor of an executor or administrator, against his testator or intestate, unless on legal and competent testimony; and the same affidavit shall be required of an executor or administrator, as is required of other claimants.

SEC. 103. The Clerk of the Court of Probate shall keep an ab-

stract of all demands established in the Court of Probate, or allowed and approved by the executor or administrator, against any estate, which shall show the amount, class, and date of filing each claim, and in whose favor.

SEC. 104. All demands against any estate, shall be paid by the executor or administrator, in the order in which they are classed ; and no demand of one class shall be paid, until the claims of all previous classes are satisfied ; and if there be not sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts, which apportionment shall be made by the Court of Probate.

SEC. 105. Every executor or administrator shall, at the first term of the Court of Probate, after one year from the date of his letters, and at the corresponding term of said court every year thereafter, until the administration be completed, present to such court a fair written statement or account current, in which he shall charge himself with the whole amount of the estate according to the sales-bill and appraisement, including all debts due the estate, and money on hand at the death of the deceased, and credit himself with all sums of money lawfully expended in settling such estate, either by the payment of debts, or otherwise, exhibiting with such acccount the receipts and vouchers for all moneys paid out.

SEC. 106. Such account shall be carefully examined by the court, and upon such examination, the court shall allow such executor or administrator for all debts with which he stands charged, which such court shall be satisfied could not be collected ; and shall allow the executor or administrator, any sum not exceeding ten per centum on all sums less than one thousand dollars, and on all sums over one thousand dollars, and less than five thousand, five per centum, and on all sums over five thousand dollars, three per centum, for his risk and trouble, in attending to the settlement of such estate.

SEC. 107. After allowing the executor or administrator all just credits on his accounts, the court shall strike the balance, and determine what sums remain on hand ; and such account when approved and confirmed by the court, shall be entered, at full length, by the clerk of such court, in a well bound book, to be kept by him for that purpose.

SEC. 108. Every account presented to the Court of Probate, by any executor or administrator, for settlement, or confirmation, shall, without being acted on, be continued until the next term of such court,

subject to the inspection and examination of all persons interested in the settlement of such estate.

SEC. 109. Any person interested, as heir, legatee, or creditor, may file exceptions to such account, or any item thereof, on or before the second day of the term of said court to which such account may be continued; and if exceptions are not filed within the time specified in this act, such account shall be examined and confirmed as herein before provided, and such account, when confirmed, shall never thereafter be subject to investigation, unless in a Court of Chancery, upon the allegation of fraud in the settlement of such account, supported by the affidavit of the party making such allegation.

SEC. 110. Immediately after the adjournment of each term of the Court of Probate, it shall be the duty of the clerk of such court to give notice, by advertisement in some newspaper printed in the county, if there be any printed in such county, and if none be printed there, by advertisements set up on the court house door of said county, and in the office of such clerk, of the several executors, administrators or guardians who may have, at such term of the court, filed their accounts for settlement and confirmation, calling on all persons interested in the settlement of any such estates to come forward and file exceptions to such accounts, if any they have, on or before the second day of the next term of the Court of Probate for said county, or they will be forever barred from excepting to such accounts or any item thereof; and the expenses of such advertisement shall be allowed by the court as expenses of administration.

SEC. 111. When exceptions shall have been filed to the account current of any executor, administrator or guardian, or any item thereof, the Court of Probate shall hear and determine the same, at the term of such court at which such exceptions may be filed, unless for good cause shown, when a continuance may be granted to the next term of such court.

SEC. 112. Such court may, if it be deemed expedient or necessary, refer any such account, with the exceptions against the same, to an auditor, to be examined and restated, and such auditor shall be governed according to the rules laid down for the government of a Master in Chancery in auditing accounts.

SEC. 113. In matters of exception to the account of any executor, administrator or guardian, the court or auditor may examine testimony for and against such exception, and shall restate such account if it shall be found incorrect.

SEC. 114. Every auditor to whom the account of any executor, administrator or guardian may be referred, shall examine, and make report of such examination on the first day of the term of the Court of Probate after the reference; and any person interested may except to such report within the same time that is allowed for filing exceptions to the report of a Master in Chancery; and such exceptions shall be determined by the court at the same term at which they are made.

SEC. 115. If the court or the auditor shall find the account of any executor, administrator or guardian incorrect, such account shall be correctly stated, and when so corrected shall be confirmed by the court, and entered of record, as required by the preceding provisions of this act.

SEC. 116. Each Clerk of the Court of Probate shall keep a docket, and enter therein a list of all executors and administrators who have not made final settlements of their accounts, the date of their letters, and the time at which they are required to make settlement; and such clerk shall put up in some conspicuous place in his office, twenty days before each term of the court, a list of all executors and administrators whose settlements are required to be made at that term of the court.

SEC. 117. If any executor or administrator shall fail to present his account for settlement at the times prescribed by this act, it shall be the duty of the Clerk of the Court of Probate to issue a citation to any county in the State where any such delinquent executor or administrator may reside, requiring him to present his accounts for settlement at the next term of the court, and show cause why an attachment should not be issued against him for not having presented his accounts according to law.

SEC. 118. If such citation be returned not served, the clerk shall, under the direction of the court, issue an *alias* citation, which may be served on the party, or may be published in some newspaper printed in this State thirty days before the return day thereof; and if, after such service or publication, no cause be shown why such settlement was not made as required, such executor or administrator may be fined in any sum not exceeding five hundred dollars, for the use of the county; and such executor or administrator and his securities shall be liable, on his official bond, for all fines and forfeitures imposed on him, and for all damages sustained by reason of such failure to settle his accounts according to law.

SEC. 119. The Court of Probate shall have power to issue attachments and all other process necessary to compel the settlement of

executors, administrators and guardians' accounts and enforce the judgments and decrees of such court.

SEC. 120. In all cases where citation or attachment may be issued against any executor or administrator for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

SEC. 121. At every settlement, the court shall ascertain the amount of money which may have come to the hands of the executor or administrator, from all sources, and the amount of claims allowed by the court, or passed by the executor or administrator, against the estate; and if there should not be sufficient to pay the whole of the debts, and expenses of administration, the money remaining, after the expenses of administration are paid, shall be apportioned among the creditors according to the provisions of this act.

SEC. 122. The Court of Probate shall order the executor or administrator to pay the claims exhibited against the estate, according to such apportionment, reserving the amount apportioned for claims which remain undecided in his hands until such claims are decided.

SEC. 123. If upon such settlement there shall be assets enough to satisfy all demands of any one class, legally exhibited against the estate and legally entitled to be paid, the court shall order the executor or administrator to pay all the claims of such class.

SEC. 124. If any executor or administrator shall fail to pay any claim ordered to be paid as aforesaid, when demanded, the Clerk of the Court of Probate, shall, on application, and being satisfied by the affidavit of the applicant that such demand has been made, issue execution for the amount ordered to be paid to such claimant, and costs, against the goods, chattels, lands and tenements of such executor or administrator.

SEC. 125. If such execution be returned not satisfied, the claimant may sue out of the Court of Probate a scire facias against the securities of such executor or administrator, referring to the official bond, and the order for payment, the execution and the return thereon, requiring such securities to show cause why judgment should not be rendered against them for the amount of such claim, ordered to be paid as aforesaid.

SEC. 126. Such scire facias may be directed to any county of this State; and upon the return thereof, duly served, if good cause to the contrary be not shown, the court shall render judgment against such security for the amount of the claim ordered to be paid as aforesaid and remaining unpaid, together with costs, and issue execution thereon.

SEC. 127. Executors and administrators shall not be compelled to pay legacies, or make distribution of the estate, until one year after the date of their letters, unless the legacies specified are of a perishable nature, or would be subject to injury if retained one year.

SEC. 128. No executor or administrator shall be compelled to pay legacies or distributive shares until two years after the date of his letters, unless ordered by the Court of Probate so to do; and not then, until bond with good and sufficient security be given by the legatee, or distributee, to refund his proportion of any debt which may afterwards be established against the estate, and the costs attending the record thereof.

SEC. 129. No widow shall be required to give bond and security to refund any portion of the property of the deceased selected by her under the provisions of this act before she receives the same.

SEC. 130. If, at any settlement, it shall appear to the court that there are sufficient assets to pay all demands against the estate, an order shall be made requiring the payment of legacies, or distributive shares, and requiring security as aforesaid.

SEC. 131. The payment of legacies or distributive shares may be compelled by attachment or execution against the executor or administrator.

SEC. 132. If slaves descend, and an equal division thereof cannot be made in kind, the Court of Probate may order them to be sold, and cause the money arising from such sale to be distributed according to the rights of those entitled to distribution.

SEC. 133. Each person entitled to a distributive share of any estate, and not applying for distribution, shall be notified in writing of any such application, at least ten days before any such order shall be made; or, if such distributee is a non-resident of this State, a notice of such application shall be published in some newspaper in this State, at least six weeks before any such order shall be made.

SEC. 134. When any such order for the sale of slaves shall be made, the court shall settle the claims of the distributees, and shall order the person making such sale to distribute the money arising therefrom according to the rights of each person, as ascertained by the court.

SEC. 135. If any such distributee become the purchaser of such slaves, his receipt for the amount of his share shall be received in payment of an equal amount of the purchase money, and the court shall allow the amount of such receipt as so much distributed under the order of the court.

SEC. 136. If real estate be sold for the payment of debts, in lieu of slaves, under the provisions of this act, the court, in making distribution of the slaves reserved, shall allow the widow such amount as she would have been entitled to, had the debt, paid by money made out of the sale of real estate, been paid out of the slaves.

SEC. 137. If, after the payment of legacies or distributive shares, it shall become necessary that the same, or any part thereof, be refunded for the payment of debts, the Court of Probate shall, on application, apportion the same among the legatees or distributees according to the amount received by them, except that specific legacies shall not be required to be refunded, unless the residue be not sufficient to pay the debts.

SEC. 138. If any legatee or distributee shall fail to refund according to such order, the court shall, on motion of the executor or administrator, ten days' notice having been given to the legatee or distributee and his security, enter judgment against such legatee or distributee and his security for the amount ordered by the court to be refunded by him.

SEC. 139. Until the widow's dower be apportioned, the court shall order such sum to be paid to her out of the hire of the slaves, and the rent of the real estate, as shall be in proportion to her interest in the slaves and the real estate.

SEC. 140. If, upon the return of the inventory and appraisement of any estate, it shall appear, to the satisfaction of the court, that the whole amount of the estate is not more than that to which the widow is by law entitled, without being subject to the payment of debts, and that there are no debts due the estate, or that they are so small that they would not defray the expenses of administration, the Court of Probate, in its discretion, may make an order that such estate be delivered to the widow, and that all further proceedings under said administration be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with.

SEC. 141. If, upon the final settlement of any estate, it shall appear that any legatee or distributee is a non-resident, or from other causes is not in a situation to receive his share of the estate, and give a discharge therefor, or does not appear, by himself or agent, to receive the same, the Court of Probate may, in its discretion, order the executor or administrator to lend the same, on good security, to be approved of by the court, for such limited time as the court may direct.

SEC. 142. No executor or administrator shall be held responsible

for the money ordered to be loaned by the court, in case of the insolvency of the person to whom the loan may be made, and his security.

SEC. 143. When any executor or administrator shall have made final settlement of his accounts with the Court of Probate, by which the balance in his hands, distributable to the widow and heirs or legatees, shall be ascertained, and shall have paid over to the widow, distributees, or legatees, or the guardian of any minor legatee or distributee, their share of the estate, such executor or administrator may file in the Court of Probate an abstract of such payments, and the receipt of the widow, legatees, distributees, or guardians; and at the term of the court after which such abstract and receipts are filed, the court shall examine the same, and if no objections be made thereto, and none appear from the face of the papers, they shall be allowed and entered of record; and such executor or administrator shall, by such allowance, be discharged from so much of the sum found by such settlement with the court as aforesaid to be in his hands, as the persons whose receipts are so allowed are entitled to.

SEC. 144. The sale and conveyance of any lands and tenements authorized to be sold by any last will and testament, shall be made by the executors, or such of them as shall undertake the execution of such will, or by the survivor, or by the administrator with the will annexed, if no other person be appointed in such will for that purpose, or if the person so appointed refuse to perform the trust, or die before he shall have completed the same.

SEC. 145. Lands and tenements shall be assets in the hands of every executor or administrator for the payment of the debts of the testator or intestate.

SEC. 146. If any testator be the owner of lands and tenements at the time of his death, of which no provision is made by will, or if any person being the owner of lands and tenements die intestate, and such testator or intestate shall not have sufficient personal estate to pay his debts, it shall be the duty of the executor or administrator to apply to the Court of Probate of the county in which the lands are situate, by petition, describing the same, and containing a true and just account of all the debts of the testator or intestate which shall have come to his knowledge, and the amount of the assets in his hands to pay such claims.

SEC. 147. Every petition for the sale of lands and tenements, for the payment of the debts of any testator or intestate, shall be verified by the affidavit of the executor or administrator.

SEC. 148. On the presentation of such petition to the Court of Probate, accompanied by the appraisement and list of sales of the personal property of such estate, if the court shall be satisfied that the personal estate is insufficient to pay the debts of such testator or intestate, the court shall order and direct the sale of all such lands as are set forth in such petition, or so much thereof as, in the opinion of the court, may be sufficient to pay the debts of the deceased.

SEC. 149. The court ordering such sale shall fix the time and place for such sale, and direct the executor or administrator to cause notice to be put up, at least twenty days before the day of sale, at ten of the most public places in the county in which the lands are situate, giving a particular description of the lands to be sold, the place and terms of sale.

SEC. 150. The court shall specify in such order, the length of credit to be given by the executor or administrator, and the kind of security to be taken.

SEC. 151. The executor or administrator making such sale, shall make his return of his proceedings therein, at the next term of the Court of Probate of the county in which the lands lie, after such sale, together with an affidavit that he was not the purchaser of such lands or tenements, or any part thereof, and that they were not purchased for his use, and that he is not in any manner interested in the purchase thereof.

SEC. 152. Such executor or administrator, shall execute, acknowledge, and deliver to the purchaser, a deed for the lands so sold, reciting in such deed the proceedings aforesaid, and conveying to such purchaser all the right, title and estate, which the testator or intestate had in, and to, such lands and tenements at the time of his death.

SEC. 153. The purchaser of such lands and tenements shall, by virtue of such deed, possess all the right, title and estate that was in the deceased at the time of his death, and shall hold such lands and tenements free from the debts of the testator or intestate.

SEC. 154. No order for the sale of lands and tenements for the payment of debts, shall be made by the Court of Probate, unless it shall appear to the satisfaction of the court, that notice of the intended application for the sale of such lands and tenements, has been given, at least four weeks before making such application, in some newspaper printed in the county where the lands lie, if there be any printed in such county, and, if none, by advertisements set up in at least six of the most public places in such county.

SEC. 155. If any executor or administrator shall file in the Court of Probate, a petition setting forth the facts of the case, and describing the lands and tenements and slaves of the testator or intestate, and praying that the slaves may be reserved from sale, and that the lands and tenements described in such petition, or so much thereof as may be necessary to pay the debts of the deceased, be sold, the court may in its discretion, if the same proceedings and publications have been had as are required in this act, upon an application for the sale of lands for the payment of debts, make an order to reserve such slaves from sale, and sell such lands and tenements in the same manner and with the like effect as in this act heretofore provided.

SEC. 156. Before any executor or administrator shall sell any lands and tenements under the provisions of this act, or any interest therein by order of the Court of Probate, he shall have such lands and tenements appraised by three disinterested householders of the county in which the lands and tenements are situated.

SEC. 157. The said appraisers shall, before they enter on their duties, make and subscribe an affidavit, that they will well and truly, according to the best of their abilities, view and appraise the lands and tenements which may be shown to them.

SEC. 158. After such appraisers shall have made their appraisement of such lands and tenements, they shall make out a statement, under their hands, and deliver the same to the executor or administrator, who shall file it in the office of the Clerk of the Court of Probate.

SEC. 159. It shall be the duty of the executor or administrator, if the lands and tenements ordered to be sold as aforesaid, do not sell for two thirds of the appraised value thereof, to reserve the same from sale.

SEC. 160. If from any cause the executor or administrator should fail to sell any lands and tenements ordered to be sold by the Court of Probate under the provisions of this act, at the time specified in such order, he shall report the facts to the court, accompanied by his affidavit of the truth thereof, and the court may appoint a different day for such sale, and so on, from time to time, until the lands and tenements shall be disposed of.

SEC. 161. If any person die, having purchased lands and tenements in his life time, and not having completed the payment, nor devised such lands and tenements, nor provided for the payment thereof by will, and the completion of such payment would be beneficial to the estate, and not injurious to creditors, the executor or administrator may, by

order of the Court of Probate, complete such payment out of the assets in his hands, and such lands and tenements shall be disposed of as other real estate; but if the court should be of opinion, that after the payment of the debts, there will not be sufficient assets to pay for such lands and tenements, the court may order the executor or administrator to sell at public sale, all the right, title, interest or claim of the testator or intestate in and to such lands and tenements.

SEC. 162. If any person die, having mortgaged any lands and tenements, or pledged any personal property, or owning any equity of redemption, and shall not have devised the same or provided for the redemption thereof by will, the Court of Probate on the application of any person interested, may order the executor or administrator to redeem such estate out of the assets in his hands, if it would be beneficial to the estate, and not injurious to the creditors; but if such redemption would be injurious to the estate or the creditors, or there should not be assets to redeem such estate after the payment of debts, the court may order all the right, title and interest of the estate of the deceased to such property, to be sold at public auction.

SEC. 163. In all cases of the sales of the interest of the testator or intestate under the provisions of the two preceding sections, the executor or administrator shall be competent, by deed, to convey to the purchaser all the right, title and interest the testator or intestate had in and to such estate at the time of his death.

SEC. 164. If any executor or administrator shall represent to the Court of Probate on oath, that there is wild stock belonging to the estate of his testator or intestate, which he is unable to collect or command, the court may order such executor or administrator to proceed and sell such stock, at public auction, without taking an inventory or making an appraisement thereof, on such credit as the court may deem reasonable, not exceeding nine months, taking bonds or notes with good and sufficient security from the purchaser.

SEC. 165. The court shall require the executor or administrator to give fifteen days' notice of the time and place of such sale, by advertisements, set up in at least six of the most public places in the county, in which such stock shall be described as near as possible, and the number, and in what neighborhood they range.

SEC. 166. The executor or administrator making such sale, shall at the next term of the Court of Probate thereafter, make return of such sales, and the court shall charge him with the amount thereof, which shall be accounted for as other assets.

SEC. 167. When any testator or intestate shall have entered into any contract for the conveyance of lands and tenements in his life time, which was not executed and performed during his life, and shall not have given power by will, to carry the same into execution, the party wishing a specific performance of such contract may file his petition in the office of the Clerk of the Circuit Court of the county in which the lands are situate, setting forth the facts on which he relies for such specific performance, and praying a summons to issue, requiring the executor or administrator to appear at the next term of such court and answer such petition; and the said clerk shall issue a summons returnable, according to the prayer of the petition, to the Circuit Court of such county, directed to the sheriff of the county in which the executor or administrator resides, which shall be served and returned as other writs of summons, and proceedings shall be had thereon as in other cases in chancery requiring the specific performance of contracts.

SEC. 168. If it should appear to the court that a specific execution of such contract ought to be made, such decree shall be made by the court as may appear just and proper, and upon such terms as the nature of the case may require, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their respective disabilities are removed, to appear and file their petition to set aside such decree for fraud and collusion, and on which petition the same proceedings shall be had as in like cases in courts of chancery.

SEC. 169. When the Circuit Court shall decree a specific performance or execution of any contract for the conveyance of lands and tenements, the executor or administrator shall make, execute, acknowledge and deliver to the petitioner a deed in pursuance of such decree, which deed shall be as effectual in law and equity as if it had been executed by the testator or intestate in his life time; and the court shall have power to enforce any such decree by attachment.

SEC. 170. Any moneys coming to the possession of any executor or administrator by virtue of such decree, shall be accounted for as other moneys of the testator or intestate.

SEC. 171. The bond of any executor or administrator may be sued on at the instance of any legatee, distributee, creditor, or other person interested, in the name of the State, to the use of such legatee, distributee, creditor, or other person interested, for any mismanagement, waste, or other breach of the condition of such bond; and the party to whose use suit is brought, shall have judgment against the ex-

ecutor or administrator, and his securities, for the whole value of the estate mismanaged or wasted, with costs of suit; and the amount so recovered shall be distributed by the Court of Probate in the same manner as if the same had been accounted for by the executor or administrator.

SEC. 172. No executor or administrator, or the security of any executor or administrator, shall be made liable for more than the amount of assets of the testator or intestate, on account of having failed to plead, or make defence, or on account of any omission or mistake in pleading, or false pleading, of any such executor or administrator.

SEC. 173. All judgments which shall be of the goods and chattels of the deceased, shall only render the executor or administrator liable for the amount of assets in his hands unadministered.

SEC. 174. When it shall become necessary in the opinion of the Court of Probate, for any executor or administrator to employ an attorney to prosecute any suit brought by or against such executor or administrator, the attorney so employed shall receive as a full compensation for his services, eight per centum on all sums less than three hundred dollars, and on all sums over three hundred and less than eight hundred dollars four per centum, and on all sums over eight hundred dollars two and a half per centum.

SEC. 175. The same compensation may be allowed for defending suits, when in the opinion of the court, the employment of an attorney may be indispensably necessary to do justice to the estate.

SEC. 176. Such attorney's fees shall be paid as expenses of administration; but no attorney's fee shall be allowed any executor or administrator unless for the prosecuting or defending a suit under the direction of the court.

SEC. 177. Appeals shall be allowed from the Court of Probate to the Circuit Court: First, on all demands against any estate, where the sum in controversy exceeds ten dollars; second, on apportionments amongst creditors, legatees and distributees; third, on all settlements of executors' and administrators' accounts, and the decisions and exceptions thereto; fourth, on all orders directing the payment of legacies, making distribution, or making allowance to the widow; fifth, on all orders for the sale of slaves and real estate; sixth, on all judgments for wasting the estate; seventh, on all orders revoking letters testamentary or of administration; eighth, on all orders compelling legatees or distributees to refund; ninth, on all orders allowing expenses of administration.

SEC. 178. All appeals shall be applied for and granted during the term at which the decision complained of is made.

SEC. 179. In all proceedings under this act, not before enumerated, the order or decision of the Court of Probate shall be final and conclusive, unless fraud be shown.

SEC. 180. In all cases where appeals are allowed, the party appealing, his agent or attorney, may tender to the court, during the term at which the appeal is asked, a bill of exceptions, specially setting forth each item, the allowance or rejection of which is objected to, and the decision of the court; and if such statement be true, the Judge of the Court of Probate shall sign the same; and upon a refusal or failure so to do, the like proceedings shall be had as on bills of exceptions to the decisions of the Circuit Court.

SEC. 181. When such appeal shall be granted or taken, the Clerk of the Court of Probate shall transmit to the Circuit Court, a certified transcript of the record and proceedings relating to the matter appealed from, together with the original papers in his office relating to the decision excepted to, but shall not send up any part of the record or papers unconnected with the matter in dispute.

SEC. 182. On every appeal the Circuit Court shall determine the points made to the decision to which exceptions have been filed; and if the Circuit Court should be of opinion that the Court of Probate erred in relation to any material question of law or fact, the Circuit Court shall try the matter *de novo;* and such court shall make the same order and decision that ought to have been made by the Court of Probate.

SEC. 183. The Circuit Court shall cause its judgment and decision to be certified to the Court of Probate, which shall be entered of record as the decision, order or judgment of such court.

SEC. 184. The party appealing from any order, judgment, decision or other matter, from the Court of Probate, his agent or his attorney, shall, before the granting of any appeal, file an affidavit that the appeal is not taken for delay, or for the purpose of vexation, but that the applicant is aggrieved by the decision of the court; and such appeal shall operate as a supersedeas to all proceedings in the Court of Probate having relation to the subject matter of the appeal, and none other.

SEC. 185. Each executor or administrator shall make final settlement of his administration within three years from the date of his letters testamentary or of administration.

[Approved: March 3, 1838.]

CHAPTER 5.

ADMINISTRATIONS--REMOVAL OF.

SECTION
1. May be made in the manner hereinafter specified.
2. What causes for removal must be set forth in petition therefor, and to what court petition to be made.
3. Petition to be verified by oath.
4. Court may then order such removal.
5. Where administrator petitions, he must have settled the estate, as far as required by law.
6. Where heirs petition, he may be compelled to settle, by order.
7. Clerk of court of probate to send transcript to court of probate of county to which removed.
8. Such court, how to proceed therein.
9. This act to extend to last wills and testaments, and letters with the will annexed.
10. And to cases of letters, wills, &c. heretofore taken out.
11. Until what time, clerk not to make out transcript.

SEC. 1. Where any person has taken out letters of administration on any estate, in any county in this State, or where the administration of any estate may have been removed to any other county by any former act of this General Assembly, such administration may be removed to any other county in this State, in the manner, and for the causes, hereinafter set forth.

SEC. 2. The administrator, or a majority of the heirs of the estate shall petition the Court of Probate for the removal of such administration, and show that the greater portion of the property belonging to said estate is in the county to which such petition prays to remove such administration, or that the larger portion of the heirs or legatees of such estate live in the county to which it is sought to remove such administration, and that such heirs or legatees wish such removal.

SEC. 3. Every petition for the removal of any administration, shall be verified by the oath of the administrator, or one of the heirs or legatees.

SEC. 4. If, on the receipt of the petition, as provided for in this act, the Court of Probate shall be of opinion that the interest of the estate will be advanced by such removal, such court may make an order, directing the change prayed for.

SEC. 5. No change of any administration shall be ordered by any Court of Probate, upon the petition of the administrator, until such

administrator shall have settled such estate as far as, by law, he should have settled the same, at the time of his application.

SEC. 6. Where a majority of the heirs petition for the removal of an administration, and the Court of Probate shall deem that the interest of the estate will be advanced by such removal, in addition to the order prescribed in the fourth section of this act, the Court of Probate shall make a further order that the administrator shall settle the same with the court granting the removal, by the next term thereafter, as far as, by law, he can settle the same, and in all things comply with the provisions of this act touching the requisites of the removal thereof, as if the same were upon his own petition.

SEC. 7. When all the requisitions of this act shall have been complied with, the clerk shall make out a complete transcript of such administration, and transmit the same to the Clerk of Probate of the county to which the said administration is ordered to be removed.

SEC. 8. When any such transcript shall be filed, the Court of Probate shall proceed thereon to final settlement, in the same manner as if such administration had been originally commenced in such court.

SEC. 9. The provisions of this act shall extend to the execution of last wills and testaments, and to letters of administration with the will annexed; and the same may be removed in like manner as in cases of administration on the estates of intestates.

SEC. 10. The provisions of this act shall extend to cases of administration, and to the execution of last wills and testaments, which have heretofore been taken out, as well as to such as may be taken out hereafter.

SEC. 11. No clerk shall make out a transcript of any administration until the administrator shall file in his office the official certificate of the Clerk of the Probate Court of the county to which such administration is ordered to be removed, that such administrator has there filed bond and security in double the amount of said estate.

[Approved and in force: February 25, 1838.]

CHAPTER 6.

ADVERTISEMENTS.

SECTION
1. How proved.
2. By whom paid for, and how allowed by the proper court.
3. By public officers, how allowed and paid.
4. Defacing any advertisement, &c. how punishable.
5. When no number of publications specified, how often to be published.
6. In what newspaper to be published.

SEC. 1. When any notice or advertisement shall be required by law or the order of any court to be published in any newspaper, the affidavit of the printer or publisher, with a copy of such advertisement annexed stating the number of times and date of the papers in which the same was published, or the production of the papers containing such advertisement in accordance with the law or order of court, shall be evidence of the publication therein set forth.

SEC. 2. When any notice or advertisement relating to any cause, matter or thing in any court of record, shall have been duly published, the same shall be paid for by the party at whose instance the same was published, who may present his account therefor to the proper court, which, or so much thereof as shall be deemed reasonable, may be taxed as other costs or otherwise allowed in the course of the proceedings to which such advertisement relates.

SEC. 3. When any advertisement shall be made by a public officer in pursuance of law, the reasonable expense thereof shall be allowed and paid out of the county or State treasury as the case may require.

SEC. 4. If any person shall intentionally deface, obliterate, tear down, or destroy before the expiration of the time for which the same shall have been set up, any advertisement, copy, transcript, or extract from any of the laws of the United States, or of this State, set up at any place in this State by authority of any law of the United States or of this State, or by the order of any court, such person shall, on conviction thereof by indictment, be fined in any sum not less than five dollars, nor more than one hundred dollars, and may, at the discretion of the court, be imprisoned not exceeding thirty days.

SEC. 5. In all cases when by any law, or order of court, any advertisement shall be directed to be published and shall not specify

any number of publications, it shall be taken and intended that such advertisement or publication, shall be published but one time.

[Approved: November 23, 1837.]

SEC. 6. The notice required by the second section of the law for the confirmation of title to lands sold for taxes, and all publications judicial and official, may hereafter be published in any newspaper printed in this State, and the proceedings thereon shall be as valid to all intents and purposes, as if such notice had been given or publication made according to any law heretofore in force regulating the same.

[Approved and in force: March 3, 1838.]

CHAPTER 7.

ALIENS.

SECTION
1. Aliens who have made declaration of their intention to become citizens, may take and hold lands, &c., by deed and will; and the same shall pass by descent to their heirs, if resident in the United States.
2. Personal estate of an alien to be distributed as if he were a citizen, and pass to his heirs, though aliens.

SEC. 1. All aliens residing in this State who have made declaration according to law of their intention to become citizens of the United States, shall be capable of taking by deed or will lands and tenements in fee simple or other less estate, and of holding, aliening and devising the same; and upon the decease of any alien having title by purchase or descent according to this act, to any lands and tenements in fee simple, such lands and tenements shall descend and pass in the same manner as if such alien were a citizen of the United States, and it shall be no objection to the husband, widow or kindred of such alien or any citizen deceased taking lands and tenements by virtue of the law of this State regulating the distribution of the estates of intestates, that they are aliens, if at the time of the death of the intestate they reside within the limits of the United States.

SEC. 2. The personal property of an alien dying intestate who at the time of his death resided in this State, shall be distributed in the same manner as if he was a citizen, and it shall be no objection to the husband or widow of any alien, or other intestate taking distributive shares of the deceased's personal estate, that they are aliens.

[Approved: December 6, 1837.]

CHAPTER 8.

APPRENTICES.

SECTION
1. Courts of probate to have jurisdiction of.
2. To appoint guardians for minors, and direct guardians to bind out their wards apprentices, &c.
3. Indenture of apprenticeship to be approved of by the court and recorded.
4. Where parents are living, but unable to maintain their children, court of probate to bind out children, and the judge to make the indenture.
5. Father or mother may bind out children.

SECTION
6. Indenture to contain covenant requiring apprentice to be sent to school one fourth of time after seven years of age.
7. Indentures by parents must be approved and recorded.
8. Probate courts to hear complaints of apprentices.
9. To hear and determine thereon without formal pleadings.
10. Also to hear complaints of masters, and may compel compensation after expiration of apprenticeship.

SEC. 1. The Courts of Probate of the respective counties, shall have jurisdiction of minors and their estates and of apprentices.

SEC. 2. It shall be the duty of said court to inquire into the situation of every orphan, and such minors as have not sufficient estate for their maintenance, and the Court of Probate shall appoint guardians for all orphans ; and in cases of minors or orphans having no estate for their maintenance and education, the Court of Probate shall direct guardians to bind their wards apprentices, until the age of twentyone years if males, if females until the age of eighteen years, to some master or mistress to be chosen by the ward, if over ten years of age, who shall covenant to teach the apprentice some useful art, trade or business to be particularized in the covenant, and shall be conditioned to send such apprentices to school at least one fourth of their time after they are seven years old.

SEC. 3. The indenture shall be approved of by the court, and recorded by the recorder of the county.

SEC. 4. In case of minors whose parents, or either of them are living, but have not the means of maintaining their children, or wilfully neglect to support and educate their children, the Court of Probate shall bind said children as in case of orphans, and in such cases the indenture shall be made by the Judge of Probate.

SEC. 5. The father of any minor, or the father being dead, the mother, when the Probate Court has not appointed a guardian, may

bind their children being minors in like manner as guardians, for the purpose of learning some useful art, trade or employment.

SEC. 6. In all such covenants by parents binding their children, the indenture shall contain the covenant requiring the minors to be sent to school at least one fourth of their time after they are seven years of age.

SEC. 7. Such indentures by parents shall not be obligatory until the same shall be approved by the Probate Court and recorded in the office of the recorder of the county.

SEC. 8. The Probate Court shall at all times receive the complaints of apprentices who reside within their respective counties against their master or mistress, whether made in person or by any other person for them, alleging undeserved or immoderate correction, insufficient allowance or quality or quantity of food, raiment or lodging, or want of proper instruction.

SEC. 9. The Probate Court shall hear and determine all such cases in a summary manner without the intervention of formal pleadings; and make such order therein as in their judgment will relieve the party injured in future, or remove the apprentices and bind them with other masters, when it shall be deemed necessary.

SEC. 10. It shall in like manner be the duty of the Probate Court to receive and hear the complaints of masters against their apprentices for desertion without good cause, and may oblige the apprentice, for loss occasioned by an improper desertion, to make compensation by further service after the expiration of his apprenticeship.

[Approved: December 1, 1837.]

CHAPTER 9.

ARBITRATORS AND AWARDS.

SECTION

1. Suits and controversies may be submitted to arbitration, and how.
2. Where no suit is depending, may be done, and how. Submission to be under seal, and may agree that award be entered as judgment of court.
3. Court to make order that arbitrators be selected — for time and place of meeting, and matter to be decided.
4. Copy of order to be served on arbitrators.
5. Such order to be notice of time and place to parties.
6. Arbitrator failing to attend, vacancy how to be filled.

SECTION
7. Power of arbitrators to meet and adjourn.
8. To issue subpœnas.
9. Penalty of witnesses failing to attend or refusing to testify.
10. Oath of arbitrators, form of, and by whom administered.
11. Power of, to administer oaths.
12. Award how to be made and disposed of.
13. Award to be opened in court and published.
14. Exceptions to, may be filed, and when.
15. Exceptions to be determined immediately, unless for cause shown.
16. Judgment on exceptions.
17. Exceptions not filed, judgment to be entered on.
18. Obedience to award, how to be enforced.
19. Not to be set aside or reversed for want of form.
20. No power taken from courts of chancery.
21. *All* the arbitrators must hear proofs and allegations, but a majority may award.
22. Arbitrators may be fined for failure to perform duties required.
23. Compensation of arbitrators.
24. of witnesses.

SEC. 1. It shall be lawful for all persons desirous of ending any suit or controversy existing between them, in any of the Circuit Courts of this State, by arbitration, to select any number of suitable persons, not exceeding five, as arbitrators, to hear and determine the matter in controversy.

SEC. 2. If no suit is depending between the parties, it shall be lawful for them, by an instrument in writing, under their hands and seals, concisely stating the matter in controversy, to submit the same to the decision of arbitrators; and the parties may, in such submission, agree that the award of the arbitrators, made pursuant to such submisaion, shall be entered as the judgment of the court.

SEC. 3. In either of the cases specified in the two preceding sections, the court shall make an order appointing such persons arbitrators as may be agreed on by the parties, and in such order appoint the time and place for the meeting of the arbitrators; and shall set forth in such order the matter to be decided by the arbitrators.

SEC. 4. A copy of such order, certified by the clerk, shall be served on the arbitrators at least ten days before the time appointed for their meeting.

SEC. 5. The order of the court, made as aforesaid, shall be sufficient notice to the parties of the time and place appointed for the meeting of the arbitrators.

SEC. 6. If either of the arbitrators fail to attend at the time and place appointed in said order for the hearing of the said controversy, the arbitrator or arbitrators in attendance shall have power to fill such vacancy by appointment, which appointment shall be recognised by the court, and regarded in the same manner as if such appointment had been made by the court.

SEC. 7. When the arbitrators shall have met in pursuance of the order of the court, they may adjourn to such other time and place as they may think proper, for hearing and determining the controversy submitted to them, not beyond the next term of the Circuit Court after their appointment.

SEC. 8. The arbitrators or either of them shall have power to issue subpœnas for witnesses, under the same rules and regulations as Clerks of the Circuit Courts, to which all sheriffs or constables to whom the same may be directed, are required to give obedience.

SEC. 9. All persons who may be summoned as witnesses, by virtue of any subpœna issued by any arbitrator, and who shall fail to attend at the time and place in such subpœna expressed, or refuse to testify when in attendance, shall be subject to the same fines and penalties as witnesses in similar cases in the Circuit Court.

SEC. 10. The arbitrators, before entering on the investigation of any suit or controversy submitted to them, shall take an oath impartially to determine the controversy to them submitted, agreeable to evidence, law, and the justice of the case, to the best of their abilities, without favor or affection, which oath may be administered by any judge or justice of the peace of this State.

SEC. 11. The arbitrators, or either of them, shall have power to administer all necessary oaths to parties and witnesses.

SEC. 12. The arbitrators, after having heard the proofs and allegations of the parties, pertinent or material to the controversy, shall make up their award in writing, under their hands and seals, noting therein the time when it was made ; which award must be sealed up, directed to the Circuit Court, and filed in the office of the Clerk of the Circuit Court, on or before the first day of the term of said court after their appointment.

SEC. 13. It shall be the duty of the clerk to present such award to the court on the first day of the term at which it was filed; and the court shall immediately open and publish the same; and it shall remain open and subject to the inspection and examination of all parties interested therein.

SEC. 14. If either party shall feel himself aggrieved by such award, he may, on or before the third day of the term of the court at which the award was filed, if the court should so long continue in session, and if not, then on or before the last day of the term of such court, file exceptions to such award.

SEC. 15. When exceptions are filed to the award of any arbitrators,

they shall be immediately determined by the court, unless for good cause shown, when a continuance may be granted to the next term of the court.

SEC. 16. If the exceptions be found just, the court shall set aside the award, and set the cause for trial as other causes in said court; and if the exceptions be overruled by the court, judgment shall be entered on the award, as if no exceptions had been filed.

SEC. 17. In all cases where exceptions shall not be filed to an award of arbitrators within the time specified in this act, the court shall enter judgment thereon.

SEC. 18. When an award shall be for the performance of any thing other than the payment of money, the same being confirmed by the court, obedience thereto may be enforced in said court by attachment, in the same manner that any other order, judgment, or decree, may be enforced in said court.

SEC. 19. No award made under the provisions of this act, shall be set aside by the court to which it is returnable, or reversed by writ of error, for any want of form, if by such award it manifestly appears that the provisions of this act have been complied with, and that the suit, matter, or controversy, submitted, is thereby finally decided.

SEC. 20. Nothing in this act contained shall be so construed as to take from courts of chancery their powers over awards.

SEC. 21. All the arbitrators must hear the proofs and allegations of the parties; but an award made, and all matters done by a majority of them, shall be valid, unless the concurrence of all the arbitrators, or any number of them, be expressly required in the submission or order of the court.

SEC. 22. The court shall have power to fine any arbitrator any sum not exceeding twenty dollars, for a failure to perform the duties required of him.

SEC. 23. Each arbitrator shall receive the sum of one dollar per day for his services, to be paid jointly by the parties.

SEC. 24. Witnesses shall be allowed the same fees as are allowed witnesses for attending the circuit courts, to be taxed as other costs.

[Approved: December 15, 1837.]

CHAPTER 10.

ARREST — PRIVILEGE FROM.

SECTION
1. Members and officers of legislature privileged from, and for what time.
2. Proceedings stayed during time of privilege.
3. Punishment of persons invading privilege.
4. Voters privileged, and for what time.
5. Those doing militia duty, and for what time.
6. No person to be arrested in Senate chamber, Representative hall, or court of justice.
7. Officers and soldiers of revolution and females privileged.
8. Not to extend to cases of treason, felony, &c.
9. Discharged on habeas corpus.

SEC. 1. The members of the Senate and House of Representatives, and the clerks, sergeant at arms and doorkeepers, of each branch of the General Assembly, shall be privileged from arrest, during the session of the General Assembly, and for fifteen days before the commencement and after the termination of each session.

SEC. 2. All proceedings, in suits pending in any of the courts of this State, in which any of the persons named in the preceding section are parties, shall be stayed during the time aforesaid.

SEC. 3. If any person shall arrest either of the persons before named, during the time they are privileged therefrom, such person shall forfeit and pay the sum of one hundred dollars, with costs, to be recovered by action of debt, in the name and for the use of the injured party.

SEC. 4. All persons qualified to vote for Representatives in the General Assembly, shall be privileged from arrest during their attendance at any election, and while on their way going to and returning from such election.

SEC. 5. No person shall be arrested while doing militia duty, under the order of his commanding officer, or while going to or returning from the place of duty or parade.

SEC. 6. No person shall be arrested in the Senate chamber or House of Representatives, during their sitting, or in any court of justice during the sitting of the court.

SEC. 7. Each and every officer and soldier of the Revolution, and each and every female, shall be privileged from arrest and imprisonment, on any process original or final, in any civil case.

SEC. 8. Nothing contained in the provisions of this act, shall be so construed as to extend to cases of treason, felony, or breach of the peace, or to privilege any person named from being served at any time or place herein specified, with a summons or notice to appear.

SEC. 9. If any person shall be arrested contrary to the provisions of this act, such person shall be discharged on a writ of *habeas corpus*, by any court or officer having authority to issue such writ, at the costs of the party procuring the arrest.

[Approved: December 13, 1837.]

CHAPTER 11.

ASSIGNMENTS.

SECTION
1. What instruments assignable.
2. How assignee may sue.
3. How far nature of defence not changed.
4. How assignment must be put in issue.
5. Assignee need not set forth consideration of assignments.
6. How assignments shall bear date.
7. When blank assignments shall be taken to have been made.
8. Assignor not to release after assignment.
9. Liability of endorsers or assignors.
10. What plantiff shall recover in several actions.

SEC. 1. All bonds, bills, notes, agreements and contracts in writing for the payment of money or property, or for both money and property, shall be assignable.

SEC. 2. The assignee of any such instrument as specified in the first section of this act, may sue for the same in his own name as assignee thereof, in the same manner that the original obligee or payee might or could do.

SEC. 3. Nothing contained in this act shall change the nature of the defence or prevent the allowance of discounts or offsets either in law or equity, that any defendant may have against the original assignor, previous to the assignment, or against the plaintiff or assignee after the assignment.

SEC. 4. The assignee of any instrument in writing made assignable by law, on bringing suit on any such assigned paper, shall not be required to prove said assignment, unless the defendant shall annex to his plea an affidavit denying such assignment and stating in such affida-

vit that he verily believes that one or more of the assignments on such instrument of writing was forged.

SEC. 5. It shall not be necessary for any assignee to set forth the consideration of any of the assignments on any such assigned paper.

SEC. 6. All assignments of any instrument of writing shall bear date of the true day upon which such assignment was made.

SEC. 7. All blank assignments shall be taken to have been made on such day as shall be most to the advantage of the defendant.

SEC. 8. No assignor shall be able to release any part of the consideration of the instrument by him assigned, after the assignment thereof.

SEC. 9. All endorsers or assignors of any instrument in writing assignable by law, for the payment of money alone, on receiving due notice of the non-payment, or protest of any such endorsed or assigned instrument in writing, shall be equally liable with the original maker, obligor or payee of such instrument, and may be sued for the same at the same time with the maker, obligee or payee thereof, or may be sued separately.

SEC. 10. The plaintiff in such several actions shall collect only the amount of his demand with interest due thereon, and the costs on only one of such actions.

[Approved and in force: December 1, 1837.]

CHAPTER 12.

ATTACHMENTS BEFORE JUSTICES OF THE PEACE.

SECTION

1. Writ of, from justice of the peace, under what circumstances granted.
2. Affidavit to obtain writ, form of.
3. By whom made.
4. Before whom taken, and attachment by whom issued.
5. Form, and manner of issuing writ.
6. Service of, and return.
7. Service of on a garnishee.
8. Service and return, where property found in hands of one not named as garnishee in the writ.

SECTION

9. How dissolved by defendant giving bond.

TRIAL.

10. Day to be set for.
11. Order to be made, calling on defendant to appear.
12. Copy of order to be published, and how.
13. Judgment, on non-appearance of defendant.
14. Defendants may appear and defend without bond.
15. Amount of judgment, how ascertained, and costs.

SECTION

GARNISHEE.

16. Examination and answer of.
17. Answer of garnishee contested, investigation and judgment.
18. Garnishee may deliver up goods, &c. when summoned.
19. After judgment, and effect of.
20. Execution stayed when debt not due.
21. Judgment, when garnishee fails to appear, or refuses to answer.
22. No judgment against garnishee till judgment obtained against principal.
23. Counter claimant to interplead, and justice or jury to inquire and determine.
24. Judgment thereon.
25. Effect of such finding.
26. Bond to be given before execution shall issue, and form of.
27. Perishable goods to be sold, how, and after notice.
28. Second attachment not levied on property in hands of officer, till first satisfied.
29. When levied on slaves, and execution how levied and slaves how sold.
30. Such execution, when returnable.
31. Concurrent jurisdiction of circuit court, when demand over fifty dollars.

SEC. 1. Every person having a real subsisting debt or demand against another, in the nature of contract, not exceeding one hundred dollars, (which debtor there is reason to believe is about to remove himself or his effects out of this State, conceals himself so that the ordinary process of law cannot be served on him, or is a non-resident of this State,) shall, on making and filing with any justice of the peace in the township where the debtor resides, or the property of such debtor may be found, an affidavit, substantially in the form herein set forth, have a writ of attachment against such debtor.

SEC. 2. The affidavit shall be, as nearly as the circumstances will admit, in the following form, to wit:

"—— *county*, }
—— *towsnhip*. }

"I, —— ——, being duly sworn, do depose and say, that —— —— is justly indebted to me in the sum of —— dollars, which sum is now due, and that the said —— ——, as I believe, is about to remove himself from this State, (or is about to remove his effects out of this State, or so conceals himself that the ordinary process of law cannot be served on him, or is not a resident of this State, as the case may be,) and unless an attachment shall be issued, there is reason to believe that said debt will be lost, or greatly delayed. —— ——.

"Subscribed and sworn to before me, an acting justice of the peace, this —— day of ——, 18—. —— ——, *J. P.*"

SEC. 3. The affidavit above required may be made by any other person than the plaintiff, if such person know the facts required to be sworn to, only varying the form of the affidavit to suit that state of the case.

SEC. 4. The affidavit required by this act to be taken and filed before the issuing of any writ of attachment, may be taken before any

judge or justice of the peace of this State, and the attachment may be issued by any justice with whom such affidavit may be filed, in the same manner as if such affidavit had been taken before such justice.

SEC. 5. Upon the filing of such affidavit, the justice shall endorse on such affidavit a writ of attachment, directed to the constable of his township, and returnable in not less than five days, nor longer than thirty days, as near in the following form as the circumstances of the case will admit:

"—— *county*, }
—— *township*. }

STATE OF ARKANSAS.

"*To the constable of —— township*, GREETING:

"You are hereby commanded to attach —— ——, by all and singular his goods and chattels, moneys, credits, and effects, or so much thereof as will be sufficient to secure the debt of —— dollars, as above sworn to, with interest and costs of suit, in whose hands or possession soever the same may be found, in your township; and do you also summon —— ——, if he be found in your township, to be and appear before me, on the ——, at ——, to answer —— —— of the premises set forth in the plaintiff's affidavit; and do you also summon —— ——, if he be found in your township, as a garnishee, that he also be and appear before me on said day, at the place aforesaid, to answer what may be objected against him. You will make due return of this writ, with your proceedings thereon, before me, on the ——, at ten of the clock on that day. Herein fail not. Given under my hand, this —— day of ——, 18—. —— ——, *J. P.*"

SEC. 6. The service of such writ shall be made by the constable going to the place where the property sought to be attached may be, and, in the presence of at least one witness, declaring that he attaches such property by virtue of such writ; and he shall make out and enter on such writ a detailed inventory of all such property as he may attach, and take the same into his possession; which return shall state in whose presence the service was made, and be signed by the constable.

SEC. 7. The service of the writ on a garnishee shall be by reading the writ to him, in his hearing, or delivering him a copy thereof, or by leaving a copy of such writ at the usual residence of such garnishee, with some white person of the family over fifteen years of age, and explaining to such persons the object of the writ.

SEC. 8. If any property of the defendant be found in the hands of any other person than such as may be named in such writ as a gar-

nishee, and such person shall refuse to deliver up such property or effects to the constable, he shall summon such person as a garnishee, and make a special return, stating the facts ; and such person so summoned shall be proceeded against in all respects as if he had been specially named in the writ of attachment as a garnishee.

SEC. 9. If, at any time before final judgment entered by such justice, the defendant shall appear and enter into bond to the plaintiff, with sufficient security, to be approved of by the justice, in double the sum sworn to in the plaintiff's affidavit, conditioned that he, the defendant, shall answer plaintiff's demand, and pay and satisfy such judgment as may be rendered in such suit against him ; then the attachment shall be dissolved, and the cause proceed as other suits for demands of a like nature.

SEC. 10. The justice shall, on the return day of any attachment, set a day for the trial thereof, which shall not be less than twenty days, nor more than thirty days, from such return day.

SEC. 11. When such day of trial is fixed, the justice shall immediately enter on his docket an order requiring the defendant to appear on the day set for trial of such writ of attachment, and answer to the plaintiff's demand, or that judgment will be entered against him on that day, and his property sold to satisfy the same, a copy of which order the justice shall deliver to the plaintiff or his agent.

SEC. 12. The plaintiff shall, within two entire days after the return day of his writ of attachment, make out, from the copy delivered to him by the justice, four copies thereof, and set them up at the most public places in the township.

SEC. 13. If, on the day of trial, the defendant does not appear and answer to the plaintiff's demand, as before provided, and the justice is satisfied that the requisite number of copies of his order delivered to the plaintiff has been duly put up as required, such justice shall proceed to give judgment for the amount which shall appear to be due to the plaintiff.

SEC. 14. All defendants in attachments shall have the privilege of appearing and defending any writ of attachment without entering into bond to the plaintiff; but on such appearance, the property attached shall remain in the constable's hands ; and all garnishees shall be and remain bound as if such defendant had not appeared.

SEC. 15. Where the plaintiff's demand is liquidated and reduced to writing, the justice shall enter judgment therefor ; but if such demand shall be unliquidated, such justice shall examine witnesses

or other evidence to ascertain the amount due and owing from the defendant to the plaintiff, and shall then enter judgment for the same; and in cases where the plaintiff fails to make out his case, the justice shall give judgment against such plaintiff for all costs that shall have accrued in any such case.

SEC. 16. When any garnishee shall appear in obedience to the summons served on him, it shall be the duty of the justice to examine such garnishee touching any goods, chattels, moneys, effects, credits, or choses in action, and the value thereof, in his hands or possession, belonging to the defendant, and the debt due by him to the defendant; and it shall be the duty of such garnishee to make full, true and perfect answers thereto.

SEC. 17. If any plaintiff shall allege that a garnishee has not made a true discovery of the property or other effects of the defendant in his possession or custody, or the value thereof, or the debts due by him to the defendant, the justice shall hear the allegations of the plaintiff, and such evidence as either shall adduce touching the matter, and immediately determine what is the true amount due from the garnishee to the defendant, or what goods, chattels, moneys, or other effects, are in the hands or possession of such garnishee, and their value; and if the finding of the justice be in favor of the garnishee, he shall recover his costs; and the justice shall enter judgment against such garnishee for the amount he shall have confessed to be in his hands; but if the finding of the justice be against the garnishee, judgment shall be entered against him for the whole amount so confessed, together with the amount of the moneys, goods, or other effects, found to be in his hands or possession, with costs.

SEC. 18. If any garnishee, when summoned, shall deliver to the constable any goods, chattels, choses in action, or other effects, the constable shall receipt to such garnishee for the same, which receipt shall be a discharge to such garnishee for such goods or other things so delivered and specified in such receipt.

SEC. 19. If any garnishee shall, at any time after judgment against him for the value of the goods and effects of defendant in his hands, deliver the property or effects of defendant to the constable, or any part thereof, the same shall be received in discharge of so much of such judgment as the same shall amount to, according to the value thereof ascertained as aforesaid.

SEC. 20. When it shall appear that any such debt to defendant is not due from the garnishee at the time of giving judgment therefor,

execution shall be stayed against him until one month after the said debt shall become due.

SEC. 21. If any such garnishee, being summoned, shall neglect to appear on the day of trial, or appearing, shall refuse to answer in any such examination, the justice shall enter judgment against such garnishee for the full amount of the plaintiff's demand.

SEC. 22. No judgment shall be entered against any garnishee in any case, either for the amount of the property that may be shown to be in his hands belonging to the defendant, or for refusing to answer to interrogatories, until after judgment has been entered against the defendant.

SEC. 23. Whenever the goods, chattels, or effects, seized on any attachment issued by a justice of the peace, shall be claimed by any other person than the defendant, the justice shall permit such claimant to interplead; and such justice, or, if either party require a jury, the jury, shall immediately inquire (unless cause be shown for a continuance) into and determine the right of property.

SEC. 24. If the justice or the jury find for the plaintiff in attachment, he shall recover his costs against the claimant; but when the finding shall be for the claimant, he shall be entitled to his costs.

SEC. 25. Such finding of the justice or jury shall not affect the right of property as between the defendant and garnishee, or third persons.

SEC. 26. No execution shall be issued against any garnishee or defendant, or any of his goods or chattels, unless the plaintiff shall enter into bond to the defendant, with sufficient security, to be approved of by the justice, in double the amount of his judgment, conditioned that if the defendant shall, within one year next following, appear, by himself or attorney, and disprove or avoid the debt or damage recovered against him, or any part thereof, he, the plaintiff, will pay unto the defendant all such sums of money as he shall have recovered and received by and upon such judgment which were not justly due to him, together with such damages as shall be adjudged against him.

SEC. 27. Where any goods or effects of a perishable nature shall be attached, the justice, when such return is made to him, may make an order requiring the constable to sell such perishable goods at auction, giving ten days' notice by at least three advertisements put up in the most public places in his township, and to retain the proceeds subject to the subsequent order of the justice.

SEC. 28. No second attachment shall be levied on property or

effects in the hands of an officer by virtue of an attachment, until the judgment in such first writ of attachment shall be satisfied.

SEC. 29. In cases where writs of attachment are issued by a justice, if the constable can find no other property whereon to levy such attachment, he may attach slaves; and when any constable shall make a return that he has levied an attachment on slaves of the defendant, it shall be the duty of such justice, after judgment is rendered in favor of the plaintiff, and when execution is to be issued thereon, to issue such execution, directed to the sheriff of his county, who shall levy such execution on the slaves so attached and in the hands of the constable, and advertise them for sale in the same manner that lands are required to be advertised, and sell them at the time prescribed by law for the sale of lands on execution.

SEC. 30. The justice of the peace issuing an execution to the sheriff of his county to sell negroes or slaves that have been attached as provided in the last preceding section, shall make such execution returnable on the third day of the next term of the Circuit Court of his county; but if such execution shall be issued less than twenty days before the next term of such Circuit Court, it shall be made returnable on the third day of the second term of said court next thereafter.

SEC. 31. In all cases of demands over fifty dollars, the plaintiff shall have his election to sue out his writ of attachment, either from a justice or from the clerk of the Circuit Court, returnable and to be tried accordingly.

[Approved: March 2, 1838.]

CHAPTER 13.

ATTACHMENTS IN CIRCUIT COURT.

SECTION

1. When creditor may proceed by in circuit court.
2. Declaration, petition or statement to be filed.
3. Affidavit to be filed, and requisites of.
4. Affidavit before whom taken, and writ by whom issued.
5. Bond to be filed, and condition thereof.
6. Writ to issue, and form of.
7. On what additional affidavit, clause of capias to be inserted against garnishee.
8. Property, how attached.
9. Upon such service, property to remain in hands of officer.
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54. Compensation to be allowed to garnishee.
55. Officers, how proceeded against for failure or neglect of duty.
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SEC. 1. In all cases of absent, or absconding debtors who may have property, real or personal in this State, the creditor may proceed against the same in the following manner, to wit:

SEC. 2. The creditor shall file, in the office of the Clerk of the Circuit Court of the county where the property may be, his declaration, petition or other statements, in writing, against his debtor, containing a true statement of the nature of his demand.

SEC. 3. The creditor shall, at the time of filing the declaration of his claim, also file an affidavit, of himself or some other person for him, stating that the defendant in the declaration or statement mentioned, is

justly indebted to such plaintiff in a sum exceeding one hundred dollars, the amount of which demand shall be stated in such affidavit, and also that the defendant is not a resident of this State, or that he is about to remove out of this State, or that he is about to remove his goods and effects out of this State, or that he so secretes himself that the ordinary process of law cannot be served on him.

SEC. 4. The affidavit, provided for in the third section of this act, may be taken before any judge or justice of the peace within this State, and the attachment may be issued by any clerk or justice, with whom such affidavit shall be filed, in the same manner as if such affidavit had been taken before such clerk or justice.

SEC. 5. The creditor shall likewise, at the time of filing his declaration or statement of his claim, file with such clerk a bond to the defendant, with sufficient security, to be approved by the clerk in double the amount of his claim as sworn to ; conditioned that he will prove his debt or demand on a trial at law or that he will pay such damages as shall be adjudged against him.

SEC. 6. On the requisites herein before prescribed being complied with, the clerk shall issue a writ of attachment, directed to the sheriff or other officer of his county, returnable as other writs, to the Circuit Court of such county, commanding him to attach the defendant by all and singular his goods and chattels, lands and tenements, credits and effects, or so much thereof as shall be sufficient to secure the debt, as sworn to, with interest and costs of suit, in whose hands or possession the same may be found in his county. And that he summon the defendant to be and appear, at the next term of the Circuit Court, on the first day of such term to answer the plaintiff's demand, and, that the sheriff summon all and every person in whose hands or possession any such lands, tenements, goods, chattels, moneys, credits or effects shall or may be found, and particularly every such person as shall be named in such writ by the request of the plaintiff, that he be and appear on the first day of the Circuit Court to which such writ is made returnable, then and there to answer what may be objected against him.

SEC. 7. If any such plaintiff shall, in addition to the affidavit required by the first section of this act, file with the clerk an affidavit, of himself or some other person for him, stating that he verily believes, that any person (naming him) in said county hath any goods, moneys or effects belonging to the defendant, in his hands or under his care, (stating the value thereof as near as he can,) or is indebted to such defendant in any sum of money, though the same may not be then due,

and shall also in manner aforesaid state that he has just cause to fear that the person so having any goods, chattels, moneys or effects in his hands or possession or who is so indebted to the defendant, is about to leave this State, such plaintiff may cause to be inserted, in such writ of attachment, a clause of capias against the person of such garnishee.

SEC. 8. The manner of attaching the lands, tenements, goods, chattels, credits or effects of such defendant, shall be by the officer's going to the place where, or the person in whose hands or possession the goods or effects are supposed to be, or to the person who is supposed to be indebted to the defendant, and then and there in the presence of one or more citizens of the county, declaring that he attaches the same.

SEC. 9. From and after the service of any writ of attachment, the property, money or effects so attached, shall remain in the officer's hands or possession, and be by him secured to abide the event of the judgment of the court.

SEC. 10. The service of the summons in the writ of attachment against the defendant (if he be found in the county) shall be made by reading the same to him in his hearing or presence, or delivering him a copy thereof.

SEC. 11. The service of a summons on a garnishee shall be made by reading the same to him in his presence and hearing, or delivering him a copy thereof, or leaving a copy thereof at his usual place of residence with some white member of the family over the age of fifteen years, and informing him of the contents of the same.

SEC. 12. The service of a capias on a garnishee shall be made by taking the body of such garnishee into custody, and committing him to the common jail of the county, unless such garnishee shall execute the bond hereinafter provided for.

SEC. 13. The defendant, at the time of the service of the writ of attachment, or at any time before judgment shall be rendered against him, may file (if before the return of the writ, with the officer executing the same, if after, with the clerk,) a bond with sufficient security, to be approved of by the officer taking the same, in double the amount of the plaintiff's demand as sworn to; conditioned, that he will appear to and answer the plaintiff's demand at such time and place as by law he should, and that he will pay and abide the judgment of the court, or that his security will do the same for him.

SEC. 14. When the defendant shall have filed the bond, as required

in the last preceding section, the attachment shall be released and the suit proceed as other suits at law.

SEC. 15. If no such bond be given, and the defendant appear by himself, or counsel, he may plead to and defend such action as other suits at law, but the property attached shall remain in the hands of the officer entitled to the possession thereof, until the same shall be disposed of according to law.

SEC. 16. When property or effects of any description are attached in the hands or possession of a garnishee, said property and effects may be released and remain in the possession of such garnishee on his filing (if before the return of such writ, with the officer serving the same, if in term time, with the clerk of the court) a bond, with sufficient security, to be approved by the officer taking the same, in double the estimated value of such property ; conditioned, that if the plaintiff shall recover judgment at law against the defendant, and the property so attached shall be adjudged to be the property of the defendant, the same shall be delivered to the proper officer, as the court may direct.

SEC. 17. And in case of a debt attached in the hands of a garnishee, if he shall execute a like bond as prescribed in the last preceding section, conditioned, that such debt due or to become due to the defendant shall be paid to the plaintiff if so adjudged by the court, the body of such garnishee shall be released from custody.

SEC. 18. In the cases supposed in the two last preceding sections, if the garnishee has been taken with a capias, the body of the garnishee shall likewise be discharged from custody, and the case proceed as if the garnishee had been served with a summons.

SEC. 19. The sheriff or other officer executing a writ of attachment, shall return the same on or before the first day of the term to which such writ is made returnable, with his return endorsed thereon, and a schedule of the property attached, and the names of the persons in whose presence the writ was executed, and also all bonds that may be taken by virtue of this act in relation to the property or persons attached.

SEC. 20. If any sheriff or other officer executing any writ of attachment, shall fail to return any bond when he releases property attached, or shall discharge from custody any garnishee upon whom he has executed a capias without taking bond, or shall return an insufficient bond, or the security in any such bond shall be adjudged in a summary manner to be insufficient, the plaintiff may cause a rule to be entered

against such sheriff or other officer, within the three first days of the term to which the writ is returnable, requiring such sheriff or other officer, in case where he has failed to return a bond when by law he should have returned one, or where the bond and security are adjudged to be insufficient, to complete such return by the first day of the next term of such court.

SEC. 21. If, on the application for such rule, the sheriff or other officer shall not be able to show good cause against granting such rule, the court shall make an order ruling such sheriff or other officer on or before the first day of the next term of such court to return a sufficient bond, in case of no bond returned, with security to be approved by the court, or when the bond or security returned is adjudged insufficient, to perfect the same to the satisfaction of the court.

SEC. 22. When such order shall be made on any sheriff or other officer, if he fail to comply with such order, on or before the first day of the next term of such court, he shall be made co-defendant in such suit, and be proceeded against, in all respects as the plaintiff might proceed against the original defendant.

SEC. 23. For all moneys collected of any sheriff or other officer, by virtue of this act, he shall have the same remedy against the person for whom he is made responsible, as bail have against their principals, to recover back moneys so paid by him; and in all such cases of judgment against the sheriff or other officer, execution shall be stayed until after the return of the execution against the defendant and garnishees.

SEC. 24. If the defendant shall not, on or before the third day of the term, (or sooner if the court shall adjourn before that time,) appear and plead, or otherwise answer to the plaintiff's action, the court shall order that a publication be made, containing a statement of the nature and amount of the plaintiff's demand, and notifying the defendant that an attachment has been issued against his estate, and that, unless he shall appear, by himself or attorney, on or before the third day of the next term, stating the time the court will meet, that judgment will be entered against him, and his estate sold to satisfy the same.

SEC. 25. The notice shall be inserted for four weeks successively in some newspaper printed in this State, within such time as the court shall prescribe; and it shall be the duty of the plaintiff to cause the same to be inserted accordingly, and the expense thereof allowed by the court may be recovered as other costs.

SEC. 26. When any writ of attachment shall be served, the plaintiff may, during the term to which said writ is returned, exhibit and file allegations and interrogatories, in writing, upon which he may be desirous to obtain the answer of any garnishee, touching the lands, tenements, goods, chattels, moneys, credits or effects of the defendant, and the value thereof, in his possession, custody, or charge, or from him due and owing to the defendant, at the time of the service of such writ, or at any time after, or which may thereafter become due.

SEC. 27. It shall be the duty of each and every garnishee to exhibit and file under his oath, on or before the third day of the next term, full, direct and true answers to all and singular the allegations and interrogatories as filed by the plaintiff.

SEC. 28. If any garnishee shall refuse or neglect to exhibit and file his answers within the time prescribed by this act, to the allegations and interrogatories exhibited and filed by the plaintiff, the court shall, if judgment be entered against the defendant, enter judgment in favor of the plaintiff against such garnishee for the amount of the plaintiff's debt or demand, so ascertained as aforesaid, together with the damages and costs of suit.

SEC. 29. If the defendant shall appear and plead to the plaintiff's action at any time before judgment entered or a jury empanelled, and shall except to the affidavit upon which the attachment was issued, and the court shall sustain such exception, the common appearance of the defendant shall be accepted, the attachment dissolved, the property attached restored, all garnishees discharged, and all bonds, returned by the sheriff or other officer, cancelled; and, if any rules have been entered against the sheriff or other officer, they shall be set aside, and the suit proceed as other suits at law.

SEC. 30. All costs that may have accrued in proceeding against any sheriff or other officer or any garnishee, shall abide the event of the suit as other costs.

SEC. 31. When the defendant shall fail to appear and answer the plaintiff's action, as herein before provided, the plaintiff may cause such default to be entered as in other cases of default, and if the plaintiff's demand is liquidated and reduced to writing, the court shall cause the clerk to calculate the principal and interest really due thereon, and enter judgment therefor accordingly.

SEC. 32. If the demand of the plaintiff be unliquidated, a jury shall be forthwith summoned and empanelled, who shall assess the

amount due from the defendant to the plaintiff, and judgment shall be entered therefor as in other cases.

SEC. 33. If the garnishee shall file his answers as herein before required and the plaintiff shall deny the truth thereof or any part thereof, or shall allege that the garnishee has not discovered the true amount of the debts due by him to the defendant, or what goods, moneys or effects are in his possession belonging to the defendant, or the true value thereof, the court shall immediately after judgment is entered against the defendant, without the formality of pleading, direct a jury to be empanelled, (unless good cause is shown by either party for a continuance,) and such jury, or if neither party require a jury, the court, shall inquire what is the true amount due from such garnishee to the defendant, and what goods and chattels, moneys, credits and effects are in his hands or possession belonging to the defendant, and the value of each article of property, and amount of money or debts.

SEC. 34. If the finding of the court or jury be against the garnishee, the court shall enter judgment against him in favor of the plaintiff, for the whole amount of debt found to be owing from him to the defendant, and the value of the goods and effects found or acknowledged to be in his possession, due, owing or belonging to the defendant, (with the costs of such inquiry,) or so much thereof as shall be sufficient to satisfy the plaintiff's demand.

SEC. 35. If the finding be in favor of the garnishee, he shall recover his costs against the plaintiff, and the judgment shall only be entered against him for the amount of debts due from him to the defendant, the moneys, and the value of the goods, chattels and effects, as discovered by his answer, and the court shall award execution therefor accordingly.

SEC. 36. If any garnishee shall deliver to the sheriff or other officer the goods and effects so found as aforesaid, or confessed to be in his possession, or any part thereof, the same shall be received in discharge of so much of the said judgment as the same shall amount to according to the value thereof.

SEC. 37. If it shall appear to the court that any debt owing from a garnishee to the defendant is not then due, execution shall be stayed for six months after the same shall become due.

SEC. 38. When the property, credits or effects, levied on by virtue of any writ of attachment, shall be claimed by any person other than the defendant, the court shall permit such claimant to interplead and set up any matter which might be pleaded or set up in defence of

the title of such property in an ordinary action at law for such property; and such court, or if either party require a jury, the jury, shall immediately (unless cause be shown for a continuance) inquire into and determine the right of property; and if the court or jury shall find for the plaintiff in attachment, he shall recover his costs against the claimant; and if the finding be for the claimant, he shall retain his property, and recover his costs against the plaintiff.

SEC. 39. The finding of the title of the property, as provided for in the last preceding section, shall not affect the title thereof as between the defendant and claimant or garnishee, in any subsequent action, or as respects third persons.

SEC. 40. When any goods or effects of a perishable nature shall be attached, the court, or the judge thereof in vacation, may make an order directing the sheriff or other officer to sell such perishable property at public auction, on giving reasonable notice of the time and place of such sale, which notice shall be prescribed by the judge or court ordering such sale; and the officer making such sale shall retain the proceeds thereof, subject to the order of the court after the final judgment in the action.

SEC. 41. No execution shall be awarded against any defendant or garnishee, nor shall any of the defendant's goods or property be sold, unless the plaintiff shall enter into bond to the defendant with sufficient security, in double the amount of his judgment, to be approved by the court, conditioned, that if the defendant in such attachment shall within three years by himself or attorney appear in the proper court and disprove or avoid the debt or the damages recovered against him or any part thereof, he the said plaintiff will pay the said defendant the full amount that shall appear to have been recovered by, and not justly due and owing to him, together with such damages as shall be assessed by a jury or the court.

SEC. 42. Executions against defendants in attachments shall be levied on the lands, tenements, goods and chattels in the custody of the sheriff or other officer, by virtue of the attachment, and such goods and effects as may be delivered to the sheriff by any garnishee, and the execution against the garnishee or so much thereof as shall not be discharged by the delivery of the property or effects of the defendant, under the provisions of the thirtysixth section of this act, shall be levied on the property of the garnishee like other executions, and the property sold in the same manner, except that the property of the defendant shall be first sold, and if the proceeds thereof shall be sufficient

to satisfy the judgment with all costs, the execution against the garnishee shall be returned and discharged as satisfied.

SEC. 43. Where the sale of the defendant's property, so attached, shall not be sufficient to satisfy the plaintiff's judgment, if there be judgment against any garnishee, the sheriff shall proceed to sell so much of the property of the garnishee as will satisfy the execution against him, or if the whole amount thereof shall not be necessary to satisfy the judgment against the defendant, then so much as will pay that part unsatisfied.

SEC. 44. Satisfaction of the execution against the defendant and payment of all costs on the other executions against garnishees shall be satisfaction of the whole judgment.

SEC. 45. No more of the property attached shall be sold than shall be necessary to satisfy the judgment against the defendant, with all costs, except where the property cannot be divided; in such case, the sheriff shall have commission only on the amount of the judgment, and the overplus, if any, shall, in all cases, be paid to the person entitled to the same, as the court shall direct.

SEC. 46. In all cases where judgment shall be entered against any sheriff or other officer for not returning a bond on the release of property, or on the release of the body of any garnishee, when taken with a capias; or for returning a defective bond, or insufficient security; if the sheriff shall fail to levy the moneys due the plaintiff on the judgment against the defendant, and pay the same to the plaintiff, or bring it into court at the return term of the execution against the defendant, the plaintiff may cause to be issued an execution against such sheriff or other officer directed to the coroner or such other officer as the circumstances may require of the court in its discretion, which shall be executed in all respects as other executions, and returned in like manner.

SEC. 47. Any person having a debt or demand against any other person exceeding one hundred dollars, and wishing to procure a writ of attachment thereon, may make or cause to be made, such affidavit as is required by the third section of this act, and also execute like bond as required by the sixth section of this act, and file the same with some justice of the peace where the defendant resides, or if the defendant has left the State, or is a non-resident, then in the county where the defendant may have property or effects.

SEC. 48. Upon the filing of such affidavit and bond, the justice of the peace shall issue a writ of attachment returnable to the next

term of the Circuit Court for his county, directed to the sheriff, coroner or constable of the township, at the discretion of the justice issuing the same, and commanding the officer, to whom such writ is issued, to attach the defendant and to summon the garnishees as is required in the sixth section of this act.

SEC. 49. Writs of attachment issued by virtue of the provisions of the last preceding section, when levied by the officer to whom the same may be directed, shall bind the property levied in the same manner as in other cases of attachment; and such writs of attachment, when returned to the Circuit Court, shall be proceeded on in all respects as other cases of attachment, except that the declaration or statement in writing, setting forth the plaintiff's demand, need not be filed in the clerk's office until within the three first days of the term to which the writ is made returnable, unless the court shall sooner adjourn, then before the adjournment of such court. No want of form in the writ, or want of a judicial seal being attached thereunto, shall vitiate the proceedings done by the justice.

SEC. 50. If the plaintiff in any writ of attachment shall fail to comply with the condition of the bond required to be executed by the plaintiff to the defendant and filed with the clerk or justice before the issuing of the writ of attachment, or if such debt or demand shall be shown not to be really due, or if it shall appear that such writ did not issue in accordance with the true intent and meaning of this act, then the clerk shall, upon the order of the court, deliver to the said defendant said bond, who may sue thereon and recover such damages, as upon a trial at law a jury may assess, for any breach of the conditions of such bond.

SEC. 51. Any justice issuing a writ of attachment by virtue of this act, shall, on or before the day to which such writ is made returnable, return and file with the clerk of the Circuit Court the affidavit and bond by him taken from the plaintiff to the defendant.

SEC. 52. Any justice failing or refusing to return the affidavit and bond as provided in the last preceding section, shall be deemed guilty of a contempt of the court, and fined in any sum not less than five dollars, nor more than the amount of the plaintiff's demand in the writ of attachment so by him issued.

SEC. 53. The plaintiff, defendant, garnishee, and all other persons or officers made parties to any writ of attachment, may prosecute writs of error, and take appeals to the Supreme Court in the like manner as in other civil cases tried in the Circuit Court.

SEC. 54. Every garnishee shall be allowed by the Court, out of the effects of the defendant so attached, a reasonable compensation for his attendance, when judgment shall be rendered against the defendant, and when in favor of the defendant, then out of the plaintiff's, to be collected as other costs.

SEC. 55. In all cases of failure or neglect of sheriffs or other officers to perform their duties as required by this act, they shall be proceeded against as provided for in other cases of failure or neglect of duty.

SEC. 56. In all cases where the property attached shall not be sufficient to pay the costs of the legal proceedings in any case, after sale of the same or expending the moneys so attached, the officer shall return the fact to the court, when the court shall order execution against the plaintiff for such costs as remain unsatisfied.

[Approved: March 2, 1838.]

CHAPTER 14.

ATTACHMENT OF BOATS, VESSELS, &C.

SECTION

1. Boats, &c. for what debts liable, and grade of such debts.
2. Upon affidavit, creditor to have attachment, and by whom issued.
3. Affidavit, before whom taken, and attachment issued by different officer.
4. Election of creditor to proceed against owner or boat, and form of writ.
5. Bond of plaintiff when suit against boat, and suit on such bond.
6. Declaration to be filed, &c.
7. Proceedings, judgment and execution.
8. Hands, &c. of boat, same remedy.
9. Boat discharged from attachment on owner giving bond.

SEC. 1. Boats and vessels of all descriptions, built, repaired, or equipped, or running upon any of the navigable waters of this State, shall be liable for all debts contracted by the owners, masters, supercargoes or assignees thereof, on account of all work done, or supplies or materials furnished by mechanics, tradesmen and others, for, on account of, or towards the building, repairing, fitting, furnishing or equipping such boats or vessels, their engines, machinery, sails, rigging, tackle, appa-

rel and furniture, and such debts shall have the preference of all other debts due from the owners or proprietors, except wages of mariners, boatmen, and others employed in the service of boats and vessels, which shall be first paid.

SEC. 2. Any person having a demand contracted as above mentioned against any such boat or vessel, upon affidavit being made and filed with the clerk of the Circuit Court, or any justice of the peace, setting forth the nature and amount of such demand, and bond given by the plaintiff as in other cases of attachment, may have an attachment, to be issued by the clerk of the Circuit Court, or by any justice of the peace having jurisdiction of the amount claimed, in any county in the State in which such boat or vessel may be found.

SEC. 3. The affidavit provided for in the second section of this act, may be taken before any judge or justice of the peace in this State, and the attachment may be issued by any clerk or justice of the peace with whom the same may be filed, in the same manner as if such affidavit had been taken before such clerk or justice.

SEC. 4. The plaintiff may make his election either to proceed against the owner or owners, by their proper names or by the name and style of their partnership, if known, or against such boat or vessel by her name or description only, which writ shall authorize and direct the seizure and detention of such boat or vessel, her engine, machinery, sails, rigging, tackle, apparel and furniture, by the sheriff or constable.

SEC. 5. In all cases where such proceedings are instituted against such boat or vessel, by her name or description only, the bond to be given by the plaintiff shall be made payable to the "State of Arkansas," for the use and benefit of the owners of such boat or vessel, who may institute a suit thereon, if damages be occasioned by the issuing of such attachment wrongfully, and have recovery thereon, in the same manner as if said bond had been given to such person in his proper name, or in the name and style of the partnership.

SEC. 6. Upon the return of such attachment, the plaintiff shall file a written declaration or statement against such boat or vessel, by her name or description, or against the owner or owners, as the case may be, briefly reciting the nature of the demand, whether for work and labor done, or materials, firewood or supplies of provisions furnished, and whether at the request of the owner, master, supercargo or consignee of such boat or vessel, and that such demand remains unpaid,

annexing to such declaration or statement a bill of the particulars constituting such demand, in separate and distinct items.

SEC. 7. Such attachment shall proceed in like manner, in all other respects, and the like judgment and execution shall be had, as in other cases of attachment.

SEC. 8. All engineers, pilots, mariners, boatmen and others employed in any capacity in or about such boat or vessel, who may be entitled to arrearages of wages in consequence of such services, may proceed to collect such wages under the provisions of this act, and shall be entitled to all the benefits thereof.

SEC. 9. If the owner, master, supercargo or consignee of any such boat or vessel, seized by attachment, shall, at any time before judgment, give bond to the plaintiff with security to be approved of by the clerk of the Circuit Court, or by the judge in term time, or justice of the peace, as the case may be, in double the amount of the demand sued for, conditioned to pay and satisfy such judgment as the court or justice may render against such boat or vessel, or against such owner, as the case may be, together with cost of suit; then such boat or vessel shall forthwith be discharged from such attachment, seizure and detention, but shall nevertheless be liable to be taken and sold on any execution to be issued on any such judgment, or upon the judgment that may be rendered at any time on the bond required to be given by the defendant party.

[Approved: February 25, 1838.]

CHAPTER 15.

ATTORNEYS AT LAW.

SECTION
1. Who may practise as such.
2. Judge of circuit court not to license to practise in supreme court.
3. How to be licensed in supreme court.
4. Oath of.
5. To be endorsed on license.
6. Clerk of each court to keep register of attorneys.
7. Penalty for practising without license.
8. Not to affect attorneys already licensed.
9. No clerk or sheriff to act as, where.

SECTION
10. Suit dismissed for negligence of attorney — liability of.
11. Proceedings against, on failure to pay over money.
12. Causes of removal or suspension from office of.
13. Charges, how and where exhibited.
14. Time of hearing the same.
15. Citation to accused, and where served, &c.
16. Citation how served.

SECTION
17. Proceedings if he fail to appear.
18. Proceedings against, on indictable offence, where record of conviction is produced.
19. Upon other charges, court only to suspend till final hearing.
20. Charge for indictable offence, when suspension discontinued.
21. Record of conviction or acquittal, conclusive evidence.
22. Charge not indictable, trial where and how to be had.

SECTION
23. Judgment thereon.
24. Charges, how verified and by whom prosecuted.
25. Exceptions, appeal and writ of error.
26. Removal or suspension to operate as such in all the courts of the State.
27. Conviction of felony or other infamous crime in another State, same effect as if in this.
28. Licensed after conviction, license to be revoked.

SEC. 1. No person shall be permitted to practise as an attorney or counsellor at law in any of the courts in this State, or to commence, conduct or defend any action or suit in which he is not a party concerned, either by subscribing his own name or that of any other person, unless he be twentyone years of age, and shall have procured a license from the judge of the Supreme or Circuit Courts.

SEC. 2. No judge of the Circuit Court shall have power to license an attorney or counsellor at law to practise in the Supreme Court.

SEC. 3. Every applicant for a license under the provisions of this act, shall produce satisfactory testimonials of his good moral character, and undergo a strict examination as to his qualifications, by the judge to whom the application is made, or some other person in his presence appointed by him for that purpose.

SEC. 4. Every person obtaining a license as an attorney or counsellor at law, shall take an oath to support the Constitution of the United States and of this State, and faithfully demean himself in his practice, according to the best of his knowledge and ability.

SEC. 5. Such oath shall be endorsed on the license by the officer administering the same.

SEC. 6. It shall be the duty of the clerk of each court of record, to keep a register in which he shall register and enrol every attorney or counsellor at law, licensed to practise in the court of which he is clerk.

SEC. 7. Every person who shall attempt to practise law in any court of record, without being licensed, sworn and registered, as required in this act, shall be deemed guilty of a contempt of court, and shall be punished as in other cases of contempt.

SEC. 8. Nothing in the preceding provisions of this act shall be so construed as to affect any person who may have obtained a license

from either of the judges of the Superior Court of the late Territory of Arkansas, or who may have heretofore been licensed under the authority of any law of this State prior to the passage of this act, but such person shall be permitted to practise as an attorney or counsellor at law by virtue of such license on being registered as in this act required.

SEC. 9. No clerk of any court of record in this State, or sheriff, while he continues to act as such, shall under any pretence whatever, act as an attorney at law in the court of which he is clerk, or in the county in which he is sheriff.

SEC. 10. If any suit in any court of record in this State, shall be dismissed on account of the negligence of any attorney, or for his non-attendance at the court without having a just and reasonable excuse for such absence, it shall be at the costs of the attorney, and such attorney shall be liable for all damages his client may have sustained by such dismission or by any other neglect of his duty, in an action on the case in any court within this State having jurisdiction thereof.

SEC. 11. If any attorney receiving money for his client, shall refuse or fail to pay the same over on demand, such attorney may be proceeded against in a summary way on motion before the circuit court, either in the county in which he may reside or in the county in which he received the money, and the court shall render judgment against him for the amount of money received by such attorney for the use of his client, with costs, and he shall be further dealt with as the court may deem just under the provisions of this act.

SEC. 12. Any attorney who shall be guilty of any felony or infamous crime, or improperly retaining his client's money, or of any malpractice, deceit or misdemeanor in his professional capacity, or shall be an habitual drunkard, or shall be guilty of any ungentlemanly conduct in the practice of his profession, may be removed or suspended from practice, upon charges exhibited against him and proceedings thereon had as hereinafter provided.

SEC. 13. The charges shall be exhibited in the county in which the offence shall have been committed, or in which the accused may reside.

SEC. 14. The court in which such charges may be exhibited, shall fix a time for the hearing thereof, allowing a reasonable time to notify the accused.

SEC. 15. The clerk of the court in which such charges may be exhibited, shall issue a citation, notifying the accused to appear at the

time and place fixed for the hearing, and answer the charges exhibited against him, to which a copy of the charges shall be attached, and such citation may be served in any county in this State.

SEC. 16. The citation shall be served in the same manner as a summons in suits at law, and the service shall be at least ten days before the return day thereof.

SEC. 17. If the accused shall fail to appear according to the command of the citation, his appearance may be compelled by attachment, or the court may proceed ex parte.

SEC. 18. If the charges allege a conviction for an indictable offence, the court shall, on the production of the record of conviction, remove the person so convicted, or suspend him from practice for a limited time, according to the nature of the offence, without further trial.

SEC. 19. Upon charges other than as in the preceding section, the court shall have power only to suspend the accused from practice until the facts shall be ascertained in the manner hereinafter prescribed.

SEC. 20. If the charges be for an indictable offence, and no indictment be found, or being found, shall not be prosecuted to trial within six months, the suspension shall be discontinued, unless the delay be produced by the absence or the procurement of the accused, in which case the suspension may continue until the final decision.

SEC. 21. The record of conviction or acquittal of any indictable offence, shall in all cases be conclusive evidence of the facts, and the court shall proceed thereon accordingly.

SEC. 22. When the matter charged is not indictable, the trial of the facts alleged shall be had in the court in which the charges are pending, which trial shall be by jury, or if the accused fails to appear, or appearing does not require a jury, by the court.

SEC. 23. In all cases of conviction, the court shall pronounce judgment of removal or suspension, according to the facts found.

SEC. 24. All charges exhibited under this act shall be verified by affidavit, and shall be prosecuted by the attorney for the State prosecuting in the circuit in which the charges are pending.

SEC. 25. In all cases of a trial of charges, the accused may except to any decision of the court, and may prosecute an appeal to the supreme court, or writ of error, in all respects as in actions at law.

SEC. 26. Every judgment of removal or suspension made in pursuance of this act shall operate, while it continues in force, as a removal or suspension from practice in all the courts of this State.

SEC. 27. In all cases of conviction for felony, or other infamous crime of any attorney at law, in any other State or Territory of the United States, such conviction, on the production of a copy of the record thereof, shall have the same effect as if such attorney had been convicted in this State.

SEC. 28. In all cases of conviction of any of the crimes specified in the preceding section, if the attorney shall have been licensed in this State, after such conviction, his license shall be revoked in the same manner as if the conviction had been had after the granting of such license.

[Approved: November 30, 1837.]

CHAPTER 16.

ATTORNEYS FOR THE STATE.

SECTION

1. Where to reside, and what actions to commence and prosecute.
2. What suits to defend and prosecute.
3. To what court or officer to give opinion when required.
4. Failing to attend any court of his circuit, court to appoint a substitute for the term.
5. Compensation of such substitute, and how paid.
6. Failing to attend supreme court when required by law, substitute to be appointed, compensation, &c.
7. Such compensation in each case to be deducted from salary of attorney in default.

SECTION

8. How convicted and punished for misdemeanor in office.
9. Attorney for State being indicted, prosecutor to be appointed — and his compensation upon conviction.
10. Such compensation, how paid.
11. Duty of, in calling persons to testify before grand jury.
12. Receiving money, &c. to give triplicate receipts, and disposition thereof.
13. To file account of moneys received, how and when, and to pay over balance due.
14. Penalty for neglect in office.

SEC. 1. Each attorney for the State shall reside in the judicial circuit for which he may be elected, under the provisions of the Constitution of this State, and shall commence and prosecute actions, both civil and criminal, in which the State or any county in his circuit may be concerned.

SEC. 2. He shall defend all suits brought against the State or any county in his circuit, prosecute all forfeited recognizances, and actions for the recovery of debts, fines, forfeitures or penalties, accruing to the State in any county in his circuit.

SEC. 3. He shall, without fee or reward, give his opinion to any sheriff, constable, justice of the peace, or county court, if required, on any question of law in any criminal case, or other matter in which the State or county is concerned, pending before such court or officer.

SEC. 4. If any attorney for the State shall neglect or refuse to attend any of the courts of the circuit for which he was elected, and prosecute as required by this act, it shall be the duty of the court to appoint some proper person, being an attorney at law, to prosecute for the State during the term.

SEC. 5. The person so appointed shall be entitled to receive the sum of forty dollars for prosecuting as aforesaid, to be paid by the treasurer of the State, out of any moneys appropriated for paying the salaries of attorneys for the State; and it shall be the duty of the auditor of public accounts, on receiving the certificate of the judge, or the circuit court making the appointment of such attorney for the State *pro tempore*, to audit and allow the account, and draw a warrant on the treasurer for the amount thereof.

SEC. 6. If the attorney for the State residing in the circuit in which the supreme court holds its terms shall fail to attend any of the terms of said court, the court shall have power to appoint an attorney to prosecute for the State, if necessary to prosecute or defend any suit for or against the State; and the attorney so appointed shall be entitled to receive the sum of forty dollars, which shall be paid by the treasurer of the State, on the warrant of the auditor, out of any money appropriated for the payment of salaries of attorneys for the State; and the certificate of the court making such appointment shall be sufficient authority for the auditor to issue his warrant.

SEC. 7. The amount authorized to be paid to attorneys for the the State *pro tempore*, specified in the two preceding sections, shall be deducted from the salary of the attorney for the State on account of whose default the appointment was made.

SEC. 8. Attorneys for the State may be indicted for any misdemeanor in office, or neglect of duty, and punished by fine not less than fifty, nor more than one thousand dollars.

SEC. 9. When a bill of indictment has been found against any attorney for the State, for any offence whatever, it shall be the duty of the court in which such indictment may be found, to appoint some person, being an attorney at law, to conduct the prosecution against such attorney, and if such attorney be convicted, the attorney con-

ducting the prosecution shall be entitled to receive the sum of fifty dollars out of the salary of such attorney for the State.

SEC. 10. The auditor of public accounts, on receiving a certificate of the conviction of such attorney for the State, shall draw his warrant on the treasurer of the State for such sum, if so much of said attorney's salary be due.

SEC. 11. It shall be the duty of each attorney for the State, whenever he shall have information of the commission of any offence against the criminal and penal laws of this State, or shall have reason to believe that any offence has been committed, to cause to be summoned all persons that he may think necessary, to testify before the grand jury in relation to such offence.

SEC. 12. It shall be the duty of every attorney for the State, whenever he shall receive any moneys for fines, forfeitures, recognizances or penalties, to deliver to the officer or person paying the same triplicate receipts, one of which, if the money received is for the use of the State, shall be forwarded to the auditor of public accounts, and another shall be filed with the county treasurer.

SEC. 13. Each attorney for the State shall, on or before the first day of January in each and every year, file in the office of the auditor of public accounts, and in the offices of the several county treasurers in his circuit, an account in writing, verified by the affidavit of such attorney, of all the moneys received by him, by virtue of his office, during the preceding year, for the use of the State or any county, and at the same time shall pay over all such moneys to the State or county treasurer entitled to receive the same.

SEC. 14. If any attorney for the State shall neglect to perform the duties required of him in the two preceding sections, he shall be deemed guilty of negligence in his office, and shall be proceeded against accordingly.

[Approved: February 19, 1838.]

CHAPTER 17.

AUCTIONS.

SECTION

LICENSE.

1. No person to act as auctioneer without license.

SECTION

2. Forfeiture for so doing.
3. How recovered.
4. *Licenses*, how to be issued.

SECTION
5. *Licenses*, form of.
6. Clerk to deliver licenses to collector of county and charge him therewith.
7. County court to settle with collector.
8. Clerk to certify to county treasurer the amount with which collector is chargeable, and treasurer to charge the same.
9. Collector to grant licenses, how.
10. Amount of license tax and fee.
11. Qualification of auctioneer as to residence.
12. Applicant for license to give bond, and form thereof.

DUTY.

13. Auction duty, what.
14. Same duty to be paid, where auctioneer, owner or person employed by either is purchaser.
15. Sale of part, with design of fixing price for whole, to be deemed a sale of the whole.
16. Cases in which no duty is to be paid.
17. Auctioneer to pay duties over to collector.
18. Auctioneers how to render their accounts to the county court.
19. Court to give auctioneer a certificate of the amount of duties to be paid by him. Receipt of collector to him to be *quietus*.
20. Clerk of county court to charge collector and certify to county treasurer, and treasurer to charge collector.
21. Court may endorse certificate of performance on auctioneer's bond, and effect thereof.
22. Prosecution on bond for breach of conditions, and effect of judgment against uctioneer.
23. Duty of collector to collect and prosecute.

SEC. 1. No person shall exercise the trade or business of a public auctioneer, by selling any goods or other property subject to duty under this law, without a license, to be issued according to law.

SEC. 2. Every person who shall exercise the trade or business of an auctioneer, without a license, shall forfeit, for every sale, five hundred dollars, together with the amount of duty payable by law on the property sold.

SEC. 3. The penalty prescribed in the last preceding section shall be recovered by action of debt, founded on this statute, one half to the person prosecuting for the same, and the other half for the use of the county.

SEC. 4. The clerks of the respective county courts shall issue, at each term, as many blank auctioneer licenses, for one, two, three, and six months, as the courts shall direct.

SEC. 5. The license shall be under the seals of the respective county courts, and signed by the clerks, and shall authorize the person to whom granted to exercise the trade and business of an auctioneer, by selling any property, real or personal, by auction, within the county, for the period of one, two, three, or six months, as the court may direct.

SEC. 6. The clerk shall deliver the blank licenses to the collector of the county, and charge him with the amount thereof in his account with such collector.

SEC. 7. The county court shall, at every term, settle with the collector for all blank licenses delivered to him, and not before accounted for, and give him credit for all blank licenses returned, and charge him with such as are not returned.

SEC. 8. It shall be the duty of the clerk to certify to the county treasurer, after each term of the county court at which a collector shall be charged with any auction license, the amount of such charge against the collector, and the county treasurer shall forthwith charge the collector with such amount.

SEC. 9. Each collector shall grant to any person, upon application, and upon a compliance with the requisitions of this act, an auctioneer license for any one of the terms of time herein specified, at the option of the applicant, and for this purpose shall fill up and countersign one of the blank licenses received from the clerk.

SEC. 10. There shall be levied upon every license, to be paid to the collector, before the delivery thereof, as follows :

First — On each license for one month, ...	$10.00
Second — On each license for two months, ...	20.00
Third — On each license for three months, ...	30.00
Fourth — On each license for six months, ...	50.00

and in each case one dollar as a fee to the clerk.

SEC. 11. No person shall be permitted to sell property of any kind at auction, unless he shall have resided in this State at least six months next preceding the time of his making application therefor.

SEC. 12. Before any license shall be granted, the applicant shall give bond to the State in any sum not less than one, nor more than three thousand dollars, with one or more sufficient securities, (the amount of the bond, and the sufficiency of the security, to be determined by the collector,) with condition that he will, at each term of the county court of the county for which he is auctioneer, while he shall continue the business of auctioneer, render to the county court of his county a true and particular account, in writing, of the aggregate amount in money of all property subject to duty by this law sold by him at auction, or at private sale at his auction rooms — that is to say, from the date of the bond until the term of the county court next thereafter, and from thenceforth, from term to term of said court, so long as he shall continue to exercise the business of an auctioneer ; and shall also pay all such sums of money as shall be due to the county upon such sales, to the collector of the proper county ; and such bond shall be filed in the office of the clerk of the county court.

SEC. 13. There shall be levied and paid upon all sales of property at auction, except as hereinafter excepted, a tax or duty to the county, at the following rates, in proportion to the prices for which the same may be sold: First, on all sales of personal property, one and a half per centum; second, on all sales of real estate, or leasehold interest in land, one half of one per centum.

SEC. 14. In all cases where the auctioneer, or owner of any property sold, or any person employed by either of them, shall become the purchaser, such sales shall be subject to the same duties as if any other person had become the purchaser.

SEC. 15. All sales at auction of any part or parcel of any merchandise, or other property, with a design to ascertain and fix a price for the whole or any part thereof, without exposing the whole, or such other part, to public sale, shall be deemed a sale at auction of the whole or such part of the property the price of which was designed to be fixed by such public sale of the part, and duties shall be paid thereon accordingly.

SEC. 16. Sales of property at auction shall be free of duty in the following cases: First, when directed by any statute of the United States; second, in execution of any order, judgment, or decree, of any court or justice of the peace of this State, or court of the United States; third, in cases of bankruptcy or insolvency, pursuant to any law of this State, or the United States; fourth, in consequence of any general assignment of property and effects, by any debtor, for the benefit of his creditors; fifth, property of deceased persons sold by authority of executors or administrators; sixth, boats, vessels, rafts, lumber, and other property, wrecked, stranded, or found adrift, on any of the waters of, or adjoining, this State; seventh, slaves, live stock, agricultural productions, farming utensils, and household and kitchen furniture, sold at the residence of the owner; eighth, land, or leasehold interest therein, sold on the premises.

SEC. 17. The auctioneer shall pay over to the collectors of the proper counties all the duties imposed by this act, and for that purpose may retain the amount thereof out of the proceeds of the property sold.

SEC. 18. Auctioneers shall render their accounts, in accordance with the condition of their bonds, to the county court of their respective counties in which they carry on their business, and shall make oath, before such court, to the best of their knowledge and belief, to the truth of such account rendered; in default of which, such accounts

shall not be deemed truly rendered according to the condition of the bond.

SEC. 19. Upon such account being rendered, the court shall ascertain the amount of the duties to be paid by the auctioneer, and give him a certificate thereof; and the auctioneer shall pay the same to the collector within twenty days thereafter; and upon producing to the clerk the receipt of the collector for the amount, a quietus shall be given therefor.

SEC. 20. The clerk of the county court shall charge the collector with the amount received, and certify the same to the county treasurer without delay; and the treasurer shall charge the collector accordingly.

SEC. 21. When it shall appear to the satisfaction of the clerk of the proper county court, that any auctioneer has fulfilled the condition of his bond, and the requisitions of this act, he shall endorse a certificate thereof upon the bond, which shall be *prima facie* evidence of the performance of the condition down to that time.

SEC. 22. When any auctioneer shall fail to fulfil the condition of his bond, or the requisitions of this act, the proper clerk shall cause him to be prosecuted on his bond; and if judgment shall be rendered against him, his license shall thereby be vacated, and he shall be incapable of receiving a new license, unless by the express order of the county court.

SEC. 23. It shall be the duty of the collectors in the several counties to collect the duties imposed by this act, and to prosecute for all fines and forfeitures which may be incurred under it.

[Approved and in force: February 28, 1838.]

CHAPTER 18.

AUDITOR AND TREASURER.

SECTION
1. Election of, and term of service.
2. Bonds of, to whom executed, and in what amounts.
3. Governor to approve bonds, and file them with secretary of state.
4. Commission not to issue till bond and security given.
5. Failure to enter into bond, in what time to work a vacancy.
6. Each to keep a seal of office, and copies authenticated by them to be evidence.
7. General duties of auditor, and his style.
8. Reports to be regularly made by him to the governor.

SECTION
9. Duties of the auditor, specially.
10. Collectors, &c. when to settle with him, and balance due to be reported to the treasurer.
11. Forfeiture and penalty for failure to pay such balance within ten days, and how recovered.
12. Claims against the State, how and within what time to be presented for allowance.
13. What offsets allowed in suits by the State.
14. Power of auditor to examine parties, witnesses, &c. on oath, and compel attendance of witnesses.
15. Accounts, &c. to be preserved, and copies given when required.
16. Form of auditor's warrant.
17. Warrant not to be drawn or paid without appropriation, or exceeding it.
18. If claimant dissatisfied with decision of auditor, the same to be referred to General Assembly.
19. Auditor to give certificate, where no appropriation made, and report to governor, to be laid before General Assembly.
20. Warrants to be entered in a book, and how.
21. Warrants to be numbered, and how.
22. Duties of the treasurer.
23. To give receipts for money paid in.
24. Endorsement of treasurer on payment of warrant or redemption of treasury certificate.

SECTION
25. Auditor to give certificate to debtor paying dues into treasury.
26. In what cases governor to appoint auditor or treasurer *pro tempore*.
27. Compensation of officer so appointed.
28. And to be deducted from salary of regular officer.
29. Power of auditor and treasurer to administer oaths.
30. To have free access to offices of the State.
31. Each to keep letter book.
32. Penalty for auditor issuing warrant unauthorized by law.
33. Penalty for treasurer refusing to pay warrant.
34. Penalty for malfeasance or misfeasance by either.
35. Accounts found due the State to be a lien, and from what time.
36. Each to submit his books, &c. to committee of General Assembly for examination.
37. Committee to examine and report.
38. Order to be made when report approved.
39. Order for suit to be brought, when report unfavorable.
40. Treasurer to deposit moneys in the state bank.
41. Auditor to report quarterly to the governor the amount of money in hands of treasurer.
42. Such report to be transmitted to the General Assembly.

SEC. 1. There shall be elected by the joint vote of both houses of the General Assembly, at each regular session thereof, an auditor and a treasurer, who shall hold their offices for the term of two years, and until their respective successors are elected and qualified.

SEC. 2. The treasurer shall immediately after his election execute and deliver to the governor a bond to the State of Arkansas, with good and sufficient securities in the sum of one hundred and fifty thousand dollars, conditioned, for the faithful performance of all the duties required, or which may be required of him by law; and the auditor shall in like manner execute his bond to the State in a sum not less than twenty thousand dollars.

SEC. 3. The governor shall endorse on the bonds of the auditor

and treasurer his approval thereof, stating the time of approval, and deliver the same to the secretary of state, who shall file the same among the records of his office.

SEC. 4. No commission shall be issued to any auditor or treasurer until he shall have given bond and security as required by this act.

SEC. 5. If any auditor or treasurer shall neglect or refuse to enter into bond within ten days after the governor is officially informed of his election, the office shall be deemed and considered vacant, and the governor shall immediately communicate the fact to the General Assembly if in session, and if not, he shall fill such vacancy according to law.

SEC. 6. The auditor and treasurer shall each keep a seal of office which shall be used to authenticate all writings, papers and documents required by law to be certified from either of said offices ; and copies of all papers and documents legally deposited in either of said offices, when certified by the officer and authenticated by the seal of office, shall be received in evidence in the same manner and with like effect as the originals.

SEC. 7. The auditor shall be the general accountant of the State, and keep all public accounts, books, vouchers, documents, and all papers relating to the contracts of the State and its debts, revenue and fiscal affairs, not required by law to be placed in some other office, or kept by some other person, and he shall be styled the Auditor of Public Accounts.

SEC. 8. It shall be the duty of the auditor to digest and report to the governor, prior to the commencement of each session of the General Assembly ; first, a full and detailed statement of the condition of the revenue and the amount of the expenditure for the two preceding fiscal years ; second, a full and detailed statement of the public debt if any ; third, estimates of the revenues and the amount of expenditures for the two succeeding fiscal years ; fourth, such plans as he may think expedient for the support of the public credit, for lessening the public expenses, for using the public money to the best advantage, and for promoting economy in the public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the State ; fifth, a tabular statement showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended ; sixth, a tabular statement showing separately the amount of money received into the treasury from all sources in each fiscal year, the amount received from each county, and from each source of revenue in each county.

SEC 9. It shall be the duty of the auditor ; first, to audit, adjust and settle all claims against the State payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by some other officer or person ; second, to draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law ; third, to express in the body of every warrant, which he may draw on the treasury for money, the particular fund appropriated by law out of which the same is to be paid ; fourth, to audit, settle, and adjust the accounts of all collectors of the revenue, and other holders of public money who are required by law to pay the same into the treasury ; fifth, to keep an account between the State and the State treasurer ; sixth, to keep an account of all moneys paid into the State treasury for the use of every county ; seventh, to keep an account between the State and the United States, and between the State and every officer or person with whom the State may have dealings, and any separate fund in the treasury authorized by law ; eighth, to direct prosecutions in the name of the State for all official delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who by any means become possessed of public money or property, and fail to pay over and deliver the same, and against all debtors of the State ; ninth, to procure from the proper officer an abstract and description of all taxable lands within the State, not yet procured, and annually, hereafter, abstracts and descriptions of such lands as shall become taxable ; tenth, to furnish the proper officer in each county, in the month of January, annually, a descriptive list of all taxable lands in such county, not before furnished ; eleventh, to give information in writing to either house of the General Assembly, whenever required, upon any subject relating to the fiscal affairs of the State, or touching any duty of his office ; twelfth, to perform all such other duties as may be required by law.

SEC. 10. All collectors of the revenue and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor on or before the first day of December in each year, to be audited, adjusted and settled ; and the auditor shall proceed without any unnecessary delay, to audit, settle and adjust the same and report to the treasurer the balance found due.

SEC. 11. If any of the persons mentioned in the preceding section shall fail to pay the amount, so found due, into the treasury, and produce the treasurer's receipt to the auditor within ten days after the set-

tlement required as aforesaid, the delinquent shall forfeit his commission allowed him by law, and the sum of twenty per centum on the amount due, and also interest at the rate of five per centum per month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment, and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or in such other manner as may be provided by law.

SEC. 12. All persons having claims against the State shall exhibit the same with the evidence in support thereof, to the auditor to be audited, settled, and allowed within two years after such claims shall accrue, and not thereafter.

SEC. 13. In suits brought in behalf of the State, no debt or claim shall be allowed as a set-off but such as have been exhibited to the auditor and by him allowed, except only in cases when it shall be proven to the satisfaction of the court that the defendant at the time is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claims to the auditor in consequence of sickness or absence.

SEC. 14. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses, and others on oath, touching any matter material to be known in the settlement of the account, and for that purpose may issue writs of summons and compel witnesses to attend before him to give evidence, in the same manner and by the same means allowed to courts of record.

SEC. 15. All accounts, vouchers and documents settled by the auditor shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who may require the same.

SEC. 16. In all cases of accounts, audited and allowed against the State, and in all cases of grants, salaries and expenses allowed by law, the auditor shall draw warrants upon the treasury for the amount due in the following form.

No.———

STATE OF ARKANSAS.

Auditor's Office,
Little Rock, ———, 18—.

I certify that the sum of —— dollars and —— cents is due by the State of Arkansas to —— ——, and do hereby direct that the treas-

urer of said State pay to the said ——, or bearer, the sum of —— dollars and —— cents, out of ——.

$——. ——— ———, *Auditor.*

SEC. 17. No such warrant shall be drawn by the auditor, or paid by the treasurer, unless the money has been previously appropriated by law, nor shall the amount drawn for or paid under any one head, ever exceed the amount appropriated by law for that purpose.

SEC. 18. If any person interested shall be dissatisfied with the decision of the auditor, in any claim, account or credit, it shall be the duty of the auditor, at the request of such person to refer the same, with the reasons of his decision, to the General Assembly.

SEC. 19. In all cases where the law recognizes a claim for money against the State, and no appropriation shall be made by law to pay the same, the auditor shall audit and settle such claim, and give the claimant a certificate of the amount thereof under his official seal if demanded, and report the same to the governor, who shall lay the same before the General Assembly.

SEC. 20. The auditor shall enter in a book to be kept for that purpose each warrant drawn by him on the treasury for the payment of money in the order in which the same shall be issued, in such manner as to show the number and date of each warrant, the name of the person in whose favor drawn, and for what drawn.

SEC. 21. The auditor shall number progressively all warrants issued by him during each year, commencing on the first day of January and ending on the thirtyfirst day of December.

SEC. 22. It shall be the duty of the treasurer, first, to receive and keep all the moneys of the State, not expressly required by law to be kept by some other person; second, to disburse the public moneys upon warrants, drawn upon the treasury, according to law and not otherwise; third, to keep a just, true and comprehensive account of all moneys received and disbursed by him, in books to be kept for that purpose, in which he shall state from whom moneys have been received and on what account, and to whom and on what account disbursed; fourth, to keep a just and true account of each head of appropriation made by law, and the disbursements under the same; fifth, to render his accounts to the auditor for settlement quarterly: sixth, to report to the governor, prior to the commencement of each regular session of the General Assembly, a statement of the condition of the treasury, and its operations for the two preceding years; seventh, to perform all such other duties as may be required of him by law.

SEC. 23. The treasurer shall grant duplicate receipts under the seal of his office for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

SEC. 24. The treasurer, when he pays any warrant drawn by the auditor, shall write on the face of such warrant "redeemed," to which he shall sign his name and the date thereof, and when he returns any treasury certificate he shall make a similar endorsement.

SEC. 25. Whenever any person indebted to the State, on any account whatever, shall present to the auditor the treasurer's receipt for the full payment of the amount due, it shall be the duty of the auditor to furnish such person with a certificate under his hand and official seal, of his having made full payment of all demands against him in favor of the State.

SEC. 26. In case of absence from the State, resignation or impeachment of the auditor or treasurer, the governor shall make an appointment for the time being of some suitable person to perform the duties of such office until the absence or disability shall cease.

SEC. 27. Any person appointed by the governor under the provisions of the preceding section, shall receive the same compensation allowed by law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service.

SEC. 28. In all cases the sums allowed to the person so appointed shall be deducted from the salary of the officer whose office he may have been temporarily appointed to fill.

SEC. 29. The auditor and treasurer shall each have power to administer oaths required or allowed by law in matters touching the duties of their offices.

SEC. 30. The auditor and treasurer shall have free access to each other's offices for the inspection of all books, accounts and papers which they respectively contain, and free access to all the other offices of the State, for the inspection of all such books, accounts and papers as concern their duties.

SEC. 31. The auditor and treasurer shall each keep a letter book, in which they shall copy all official letters which may be written by them.

SEC. 32. If the auditor shall knowingly issue any warrant upon the treasury not authorized by law, he shall be guilty of a misdemeanor

in office, and upon conviction thereof, he shall forfeit for the use of the State any sum not less than fifty dollars.

SEC. 33. If the treasurer shall wilfully and unlawfully refuse to pay any warrant drawn upon the treasury, having funds on hand for that purpose, he shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, shall be fined for the use of the State in any sum not less than one hundred dollars.

SEC. 34. If the auditor and treasurer shall wilfully neglect, or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty, not allowed by law, or shall by color of his office knowingly do any act not authorized by law, or shall use any of the moneys belonging to the State, or shall perform any other duty of his office in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and on conviction thereof, shall forfeit for the use of the State any sum not less than one hundred dollars.

SEC. 35. The amount of any account audited, adjusted and found due the State, with the penalties and interest thereon, shall be a lien on all the real estate of the person charged with the same, from the time suit shall be brought for the recovery thereof.

SEC. 36. It shall be the duty of the auditor and treasurer to submit all their accounts, books, vouchers and other official documents in their respective offices, to a joint committee of the General Assembly, immediately after the commencement of each session of the General Assembly, for examination and settlement.

SEC. 37. It shall be the duty of such committee to examine the books, accounts, vouchers and other official documents of the auditor and treasurer, and make report thereof to both houses of the General Assembly.

SEC. 38. If each house shall approve the report of such committee, an order shall be made directing the committee to cause the proper entries to be made in the books of the auditor and treasurer, showing the result of such settlement.

SEC. 39. If such committee shall make an unfavorable report, and find that either the auditor or treasurer have not performed the duties required of him by law, and if such report shall be approved by both houses of the General Assembly, an order shall be made directing the governor to cause suit to be brought against the delinquent on his official bond.

SEC. 40. It shall be the duty of the treasurer to deposit all moneys belonging to the State, which may come to his hands, within ten days after the receipt thereof, in the Bank of the State of Arkansas.

SEC. 41. It shall be the duty of the auditor to make quarterly reports to the governor, of the amount of moneys in the hands of the treasurer belonging to the State or any county.

SEC. 42. It shall be the duty of the governor to transmit to both houses of the General Assembly, at each regular session thereof, the reports of the auditor and treasurer required by this act to be made to him.

[Approved: March 5, 1838.]

CHAPTER 19.

BASTARDY.

SECTION

1. In cases of, justices to have jurisdiction.
2. On complaint of white woman, warrant to issue.
3. If child not born, the party taken, to enter into recognizance or be committed.
4. When father ascertained, to enter into recognizance, and form thereof.
5. Order for expenses and maintenance.
6. Execution how to issue thereon.
7. May be revived against executor, &c.
8. On failure of father to enter into such bond, to be committed.
9. Form of commitment.
10. Discharge on entering into bond, &c.
11. Bond to be filed, and penalty for failure.
12. Appeal allowed from order of maintenance.
13. Recognizance for appeal.
14. On appeal, mother and witnesses to be recognized to appear.

SECTION

15. Transcript to be certified to circuit court.
16. Attorney for the State to appear on appeal.
17. What orders to be made or amended by the court.
18. Jury may be empanelled to try whether appellant is the father.
19. Bond to be taken on affirmance or verdict against appellant — or committal.
20. Effect of amended order, and how carried into execution.
21. Power of court to make orders and release the party.
22. Proceedings and evidence in cases of.
23. Mother when to be brought before justice, and proceedings thereon.
24. To be discharged on discovery of the father, and proceedings thereon.

SEC. 1. The justices of the peace of this State shall have jurisdiction in all cases of bastardy.

SEC. 2. On complaint made to any justice of the peace of this State, by any white woman resident therein, who shall hereafter be delivered of a bastard child, or be pregnant with a child which, if

born alive, may be a bastard, charging on oath any person with being the father of such child, the justice shall issue his warrant to the sheriff, coroner or any constable of the county, commanding him forthwith to bring such accused person before him to answer such complaint.

SEC. 3. When the warrant is returned, if the child is not born, the justice shall require the person charged as the father to enter into recognizance to the State in the sum of three hundred dollars, with sufficient security, conditioned to be void if such person shall appear before said justice at the expiration of thirty days after the birth of such child, and on every subsequent day to which the justice may adjourn the case; and in case of a failure to enter into such recognizance, the justice shall commit such person to the common jail of the county.

SEC. 4. When it is determined that a person is the father of a bastard child, the justice shall order that such person with sufficient security become bound to the State of Arkansas, by a joint and several obligation, in the penal sum of three hundred dollars, with condition to be void if such person, or his executor or administrator, shall indemnify each county in the State from all costs and expenses for the maintenance or otherwise of such child while under the age of seven years.

SEC. 5. Such justice shall further order, that such person pay, for the lying-in expenses, to the mother or the person who incurred the same, a sum not less than five nor more than fifteen dollars, and for the maintenance and the support of such child, to the mother or other person keeping such child, a monthly sum, not less than one dollar nor more than three dollars for every month from the birth until the child shall attain the age of seven years.

SEC. 6. The order in the preceding section specified, shall be of the same nature as a judgment before a justice of the peace, and execution may be issued for any sum in arrear by the justice making the order, or any other justice with whom a transcript of such order may be lodged.

SEC. 7. Such order may be revived against the executor or administrator of the person against whom the same was entered, in like manner as a judgment.

SEC. 8. If such person shall refuse or neglect to enter into bond with security as required in the fourth section of this act, the justice shall commit him to the jail of the county, there to remain until he shall comply with such order, or until he shall be otherwise discharged according to law.

SEC. 9. Such commitment may be according to the following form; to wit:

STATE OF ARKANSAS, }
COUNTY OF ———, } ss.

The State of Arkansas to the Sheriff of —— county, Greeting:

A. B. is committed to the jail of said county of ——, to remain in custody until he give security, in form prescribed by law, to indemnify the several counties of this State from all costs and expenses, for maintenance or otherwise, on occasion of a (male or female) bastard child, born of ——, on or about the —— day of ——, A. D. 18—, of which child it has been duly determined the said A. B. is father, and he has neglected (or refused) to become bound with security according to the order thereupon made by me, one of the justices of the peace in and for the county aforesaid.

Given under my hand, the —— day of ——, A. D. 18—.

—— ——, *J. P.*

SEC. 10. In case of commitment, any justice of the peace for the county may take and approve the requisite obligation and security, and discharge the party, whether such commitment be by a justice, or by the court, as hereinafter prescribed.

SEC. 11. The justice taking any obligation required by the fourth section of this act, shall endorse thereon his approval, and cause the same to be filed in the office of the clerk of the county, and in case of failure shall forfeit any sum not exceeding ten dollars.

SEC. 12. Any person against whom an order may be made as required by the provisions of this act, may appeal to the circuit court of the proper county, at any time within thirty days after the making of such order.

SEC. 13. The person taking such appeal shall enter into a recognizance before the justice with good and sufficient security, in the penal sum of three hundred dollars, with condition to be void if the appellant shall appear in the circuit court, and prosecute his appeal with effect, on the first day of the next term of said court after the taking of such appeal, and not depart such court without leave.

SEC. 14. In case of an appeal, the justice shall require the mother of the child, and other witnesses for the State, to appear before him and enter into recognizance to the State in the sum of one hundred dollars, with condition to be void if they shall respectively appear in said court to give evidence on said appeal, and not depart

said court without leave; and the justice may, in his discretion, require the mother and other witnesses to give security in such recognizance.

SEC. 15. Upon such appeal, the justice shall immediately transmit a certified copy of all orders that he may have made in relation to the case, together with all papers having relation to the matter, to the clerk of the circuit court.

SEC. 16. The attorney for the State prosecuting in such circuit shall appear and answer the appeal, and conduct the cause on the part of the State.

SEC. 17. The court may reverse the orders complained of, or either of them, or direct any amendment thereof, or make such other orders as the justice of the case may require.

SEC. 18. If the appellant deny that he is the father of the child, the court shall, without further pleading, order the matter to be tried by a jury in such court.

SEC. 19. If the orders of the justice be affirmed or amended, or there be a verdict of a jury against the appellant, the court shall take and approve the obligation required in the fourth section of this act; and in case of the neglect or refusal of the appellant to enter into such obligation, shall commit him until he does enter into such obligation, or be otherwise discharged according to law.

SEC. 20. Every order amended by the court shall have the same force and effect as the original, and shall be carried into effect in the same manner as the original.

SEC. 21. In all cases coming before the court under the provisions of this act, the court shall have power to make such order as the justice of the case shall require, and to release the party charged, on his own recognizance.

SEC. 22. In all cases of bastardy, the proceedings shall be in the name of the State; and the mother shall be a competent witness, unless legally incompetent to be a witness in any case; and if the mother be dead at the time of trial, her declarations made in her travail, and proved to be her dying declarations, shall be evidence.

SEC. 23. Every justice of the peace, upon his own knowledge, or upon information, that a woman has been delivered of a bastard child, shall cause her to be brought before him, and require her to discover, under oath, the father of such child, or give security, in like manner and sum as herein before required in case of the father, to indemnify the county from all costs and expenses for the maintenance or

otherwise on occasion of such child while under the age of seven years; and if she will not discover the father of such child, or give security, the justice shall commit her to jail until she so discovers or gives security.

SEC. 24. Any justice of the peace of the county may take such discovery and discharge the party, and upon such discovery of the father, process shall be issued against him without delay.

[Approved: February 24, 1838.]

CHAPTER 20.

BILLS OF EXCHANGE.

SECTION
1. Acceptance of, must be in writing.
2. If on different paper from bill, how far to bind acceptor.
3. An unconditional promise before bill is drawn, to accept, deemed actual acceptance, how far.
4. Acceptance may be required to be written on bill, and on refusal may be protested.
5. Not to preclude recovery of damages for promise to accept, and subsequent refusal.
6. Destroying, or refusing to return bill, to be deemed acceptance.
7. Damages on protest for non-acceptance or non-payment and amount of.
8. Damages on protest for non-payment after acceptance.
9. Costs of protest and interest allowed, and at what rate.
10. Action on, against whom.
11. Protest of notary public to be evidence.
12. Who only shall recover damages.
13. Construction of words "bills of exchange."
14. Remedy on bills of exchange, promissory notes, or obligations payable in bank, how governed as to days of grace, protest and notice.

SEC. 1. No person within this State, shall be charged, as an acceptor of any bill of exchange, unless his acceptance shall be in writing.

SEC. 2. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

SEC. 3. An unconditional promise, in writing, to accept a bill, before it is drawn, shall be deemed an actual acceptance, in favor of every person who, in faith thereof, shall have received the bill for a valuable consideration.

SEC. 4. Every holder of a bill, on presenting the same for acceptance, may require the acceptance to be written on the bill; and a refusal to comply with such request, shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

SEC. 5. Nothing in the preceding sections shall be so construed as to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

SEC. 6. Every person upon whom a bill of exchange is drawn, and to whom the same may be delivered for acceptance, who shall destroy such bill, or refuse, within twentyfour hours after such delivery, or within such time as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same.

SEC. 7. Every bill of exchange expressed to be for value received, drawn or negotiated within this State, payable, after date, to order or bearer, which shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, shall be subject to damages in the following cases:

First.—If the bill shall have been drawn on any person at any place within this State, at the rate of two per centum on the principal sum specified in the bill;

Second.—If the bill shall have been drawn on any person, and payable, in any of the States of Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, or any point on the Ohio river, at the rate of four per centum on the principal sum in such bill specified;

Third.—If the bill shall have been drawn on any person, and payable at any place within the limits of the United States, not herein before expressed, at the rate of five per centum on the principal sum specified in the bill;

Fourth.—If the bill shall have been drawn on any person, and payable, at any port or place beyond the limits of the United States, at the rate of ten per centum on the sum specified in the bill.

SEC. 8. If any bill of exchange, expressed to be for value received, and made payable to order or bearer, shall be drawn on any person at any place within this State, and accepted and protested for non-payment, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases:

First.—If the bill be drawn by any person at any place within this State, at the rate of two per centum on the principal sum therein specified ;

Second.—If the bill be drawn by any person at any place without this State, but within the limits of the United States, at the rate of six per centum on the sum therein specified ;

Third.—If the bill be drawn by any person at any place without the limits of the United States, at the rate of ten per centum on the sum therein specified.

SEC. 9. In addition to the damages allowed, in the two preceding sections, to the holder of any bill of exchange protested for non-payment or non-acceptance, he shall be entitled to costs of protest, and interest at the rate of ten per centum per annum, on the amount specified in the bill, from the date of the protest until the amount of such bill shall be paid.

SEC. 10. The holder of any bill of exchange protested for non-acceptance or non-payment, when such protest shall have been properly made before any duly qualified notary public, shall have his action at law against the drawer, endorser, and acceptor, or either of them, for the recovery of the amount of such bill so protested, together with all damages, interest, and costs, that may have accrued thereon, according to the provisions of this act.

SEC. 11. The protest made by the notary public, under his hand and seal of office, shall be allowed as evidence of the facts therein contained.

SEC. 12. The damages allowed by this act shall be recovered only by the holder of the bill, who shall have purchased or acquired some interest in the same for a valuable consideration.

SEC. 13. The term "bill of exchange," as used in this act, shall be so construed as to include all drafts or orders drawn by one person on another, for the payment of a sum of money specified therein.

SEC. 14. The remedy on bills of exchange, foreign and inland, and on promissory notes or obligations payable in bank, shall be governed by the rules of the law merchant, as to days of grace, protest, and notice.

[Approved and in force: February 28, 1838.]

CHAPTER 21.

BONDS, BILLS AND NOTES.

SECTION
1. Suit on, may be by petition in debt.
2. Form of petition.
3. If plaintiff be assignee, form of stating it.
4. When executors or administrators may so sue.
5. By executors and administrators, form of petition.
6. Manner of filing petition, &c., and writ how to issue.
7. Manner of prosecuting suit, and proceeding therein.

SEC. 1. Any person, being the legal owner or holder of any bond, bill or note, for the payment of money or property, may sue thereon in any circuit court having jurisdiction thereof, by petition in debt.

SEC. 2. The petition may be in the following form: "To the circuit court of the county of —— of the —— term thereof, 18—. Your petitioner, A. B., the plaintiff in this cause, states that he is the legal owner (or holder) of a bond (bill or note as the case may be) against the defendant, C. D., to the following effect, (here insert a copy of the instrument sued on) yet the debt remains unpaid; therefore he demands judgment for his debt and damages for the detention thereof, together with costs," and such petition shall be signed by the petitioner or his attorney.

SEC. 3. If the plaintiff be the owner of the bond or instrument sued on, as assignee, the fact of the assignment shall be stated in the petition, and the statement thereof may be in the following form, to be stated immediately after the copy of the bond, bill or note; "on which are the following assignments, (here insert the assignments) by virtue of which the plaintiff has become the owner thereof."

SEC. 4. Executors and administrators may institute suits under the provisions of this act on bonds, bills or notes executed to their testator or intestate, or to them as executors or administrators or when their testator or intestate was the assignee of any bond, bill or note.

SEC. 5. In suits by executors and administrators the petition may be in the following form: "Your petitioner A. B., executor (or administrator as the case may be) of the estate of G. H., deceased, plaintiff in this cause, states that he as executor (or administrator) is the legal holder of a bond (bill or note) against the defendant C. D.,

and executed (or assigned) to the said G. H. in his life time, (or to the plaintiff as executor or administrator,) to the following effect (here insert a copy of the instrument sued on). Yet the defendant detains said debt and the same remains unpaid, therefore judgment is demanded for the debt, and damages for the detention thereof, together with costs."

SEC. 6. In all suits instituted under the provisions of this act, the petition signed by the plaintiff or his attorney, together with a true copy of the instrument sued upon and the assignments thereon if any, shall be filed in the office of the clerk of the circuit court, and a writ of summons, or capias may be sued out, executed and returned in the same manner and with like effect as upon declarations in the ordinary form.

SEC. 7. Every suit commenced in accordance with the form prescribed in this act, shall be prosecuted to final judgment and execution in the same manner as if it had been commenced in the ordinary form.

[Approved: November 29, 1837.]

CHAPTER 22.

CENSUS.

SECTION
1. When and how often to be taken.
2. By whom.
3. Form of.
4. To distinguish each township, &c. and carry out aggregates.
5. How transmitted and endorsed.
6. Compensation of sheriff for taking.
7. By actual inquiry to be made.
8. Delinquent sheriffs to be notified by secretary of state, and how.
9. Within what time delinquent may file census.
10. Failing to do so, other sheriffs to be commissioned.

SEC. 1. An enumeration of the inhabitants of this State shall be taken on the first day of January, one thousand eight hundred and fortytwo, and at the end of every four years thereafter.

SEC. 2. The census or enumeration of the inhabitants of this State, shall be taken by the sheriffs of the respective counties.

SEC. 3. Each sheriff shall commence taking such enumeration, on the first day of January, in each year in which the census or enumer-

ation is required to be taken, and shall make his return to the secretary of state, on or before the first day of April in every such year, which census shall be in the following form :

Township of ———																		
Names.	*White Males.*					*White Females.*		*Free persons of color.*		*Slaves.*			*Acres of land in cultivation*	*Production.*				
	Under ten years.	Over ten and under eighteen.	Over eighteen and under twentyone.	Over twentyone and under fortyfive.	Over fortyfive.	Under sixteen years.	Over sixteen years.	Males.	Females.	Under Eight years.	Over eight years and under sixty.	Over sixty years.		Cotton.	Grain.	Bales of Cotton.	Bushels of Corn.	Bushels of Wheat.	Bushels of Oats.

SEC. 4. The sheriff shall distinguish each township or incorporated city or town, giving the census separate, and shall carry out an aggregate of each description of persons, and the total of the whole.

SEC. 5. The several sheriffs may transmit their returns of the census by mail, to the secretary of state. Such sheriff shall endorse, on the outside of the cover of such returns his name, office, and the word "census."

SEC. 6. Each sheriff shall receive, in full compensation for taking the census of his county, the following compensation, to be paid out of the State treasury: For all individuals contained in the census return of his county, under one thousand, three cents each ; all over one thousand, and not exceeding two thousand, two and one half cents each ; all over two thousand, and not exceeding three thousand, two cents each ; all over three thousand, and not exceeding four thousand, one and a half cents each ; all over four thousand, one cent each.

SEC. 7. The census shall be made by actual inquiry of the sheriffs

at every dwelling-house, or by personal inquiry of the head of every family, in their respective counties.

SEC. 8. It shall be the duty of the secretary of state, to make out a list of the names of the sheriffs who have failed to file in his office, on or before the first day of April, in each year in which the census is required to be taken, the census of their counties, and cause the same to be inserted in some newspaper published in this State, for three weeks immediately following the first day of April, notifying all such delinquent sheriffs to file their census returns by the first day of May then following.

SEC. 9. Every such delinquent sheriff who shall be so advertised, shall, if he files his census return after the first day of April, and before the first of May, be permitted to do so on his paying the entire expense of such advertisement.

SEC. 10. It shall be the duty of the secretary of state to make out a list of all delinquent sheriffs who have not filed their census return by the first day of May, and hand the same to the governor, who is hereby required to commission other sheriffs for such counties as the defaults have occurred in.

[Approved: February 25, 1838.]

CHAPTER 23.

CHANCERY.

SECTION

1. Jurisdiction of circuit courts in chancery—general rule of proceeding, and their decrees how to be enforced.
2. No jurisdiction unless matter in controversy exceeds forty dollars, except in cases of injunction.
3. Bills and petitions, how addressed.
4. Suits in, where to be brought.
5. Set-offs, how allowed.
6. Suits to be commenced by bill or petition.

PROCESS.

7. Subpœna to issue thereon, and form thereof.
8. Separate subpœnas to issue to each county where there are several defendants.
9. Suits in, may be commenced and prosecuted by infants, and how.
10. Infants may defend, and how.
11. Next friend or guardian, how appointed.
12. How heirs may be made defendants, when names unknown.
13. Subpœna in, how served.
14. Return of sheriff, how made.
15. On affidavit that all or part of the defendants are non-residents, what order to be made.
16. If part are residents, process to issue as in other cases.

SECTION
17. What order to be made when return made that some defendant is not found.
18. Such orders how to be published.
19. When alias process, &c., may issue.
20. Non-residents may be served by delivering a copy of the bill or petition and notice. How and at what time.
21. Who may make such service and how.

PLEADING.

22. *Defendants* served thirty days before court, to make defence—at what time, and effect of failure.
23. Defendants not served thirty days before, to make defence at second term, and effect of failure.
24. No exceptions or plea to be allowed after interlocutory decree; and how such decree may be set aside with leave to answer or demur.
25. Exceptions, to be in writing, &c., and how determined.
26. Practice on exceptions to bill allowed.
27. " on exceptions to bill overruled.
28. Defendant may plead several pleas, and restrictions on such right.
29. Where the bill expressly charges fraud, plea how to be accompanied.
30. Costs and practice on determination upon pleas.
31. *Demurrer*, costs upon, and practice.
32. *Answer*, to be full, and how far.
33. to be under oath.
34. may exhibit new matter, propound interrogatories, and call on complainant to answer on oath.
35. Practice if complainant fails to answer.
36. Effect of complainant's answer to interrogatories, as evidence.
37. How defendant shall bring new party before the court.
38. Before whom affidavits of verification must be made and how attested.
39. Exceptions to answer or interrogatories, when filed and determined, and costs thereon.
40. Exceptions allowed, defendant to answer further, and effect of default.
41. Practice upon filing such further answer, and costs if again adjudged insufficient.
42. No further answer to be filed after third answer.
43. Complainant not to dismiss bill, after cross bill filed.
44. Complainant not to answer cross-bill or interrogatories, till defendant has answered bill.
45. Pleas and demurrers to be disposed of before proceeding on answer.
46. Replications to be general, and when filed.
47. Upon replication filed, cause to be at issue, and set for hearing, when.
48. Practice upon failure to file replication.
49. Upon discovery prayed, disclosures in answer not to be conclusive.
50. Record, how to be pleaded, and exhibit thereof, how made.
51. Manner of pleading, when deed, record, &c., cannot be produced; and what evidence thereof to be received.
52. How parties may be required to produce books, deeds, &c.
53. Effect of failure to produce, without good cause shown, upon order therefor.
54. Pleadings, how to be signed, endorsed and filed.
55. Court may extend time for pleading, &c.
56. Amendments how allowed.
57. When amendment not to require new subpœna.
58. *Exhibits* to be numbered and marked.
59. Court to require distinct issues to be made up.

HEARING.

60. Causes when to be determined—and testimony confined to issue.
61. Practice when both parties fail to appear.
62. Docket to be made out by clerk.
63. Clerk to set up list of cases in office.
64. Issues of fact may be tried by jury.
65. Rules as to new trial of issue.
66. When parties may proceed to take testimony.
67. Testimony how to be taken.
68. Depositions, how taken.
69. Rules of evidence.
70. Exceptions may be taken, and practice as to bills of exceptions.

SECTION

MASTER.

71. *Master in Chancery*, how appointed, and term of service.
72. Powers of.
73. But one to be in each county, and exceptions to this rule.
74. Oath of.
75. To audit and adjust matters of account.
76. To give notice of time and place of hearing matters referred to him, and may proceed *ex parte*, on failure of party to attend.
77. Power of, to adjourn sittings, and compel attendance of witnesses.
78. To reduce testimony to writing, and commit witnesses refusing to testify.
79. Depositions regularly taken may be read in evidence before master.
80. How he shall state accounts referred.
81. If exceptions are taken to testimony, &c., master to state exceptions in report.
82. How he shall report.
83. *Report* to be in sheets, &c.
84. Exceptions thereto, how and when made.
85. How far report shall stand good.
86. For what causes, exceptions allowed.
87. When exceptions are allowed, report to be again referred, with instructions.
88. No exceptions filed, or exceptions overruled, decree to be entered.
89. Exceptions allowed, and account restated, decree to be entered.
90. Notices, how served and returned.

DEATH.

91. How suit to proceed on death of one of several defendants or complainants, where cause of action survives.
92. Where cause of action does not survive.
93. How when sole complainant or defendant dies.
94. No bill of revivor necessary on death of defendant; and suit how revived against his representatives.
95. Subpœna against them, how served and returned, and publication how made.
96. Not appearing, court may order appearance to be entered.
97. In such case, answer of original defendant to be taken as answer of representatives—and proceedings if there be no answer.
98. How complainant may obtain further answer from representatives.
99. Proceedings if such further answer be not put in.
100. Complainant dying, and cause of action not surviving, his representatives how made parties.
101. If bill be amended, defendant how compelled to answer, and cause how to proceed.
102. Representatives of deceased complainant, how to be made parties by surviving complainant.
103. How when there is no surviving complainant, or he neglects to proceed.
104. If no cause shown, court may revive or dismiss the suit.
105. One defendant dying, cause of action not surviving, and complainant taking no steps to renew, how revived by surviving defendant.
106. Proceedings in such case.
107. Proceedings on failure of representatives to be made parties under this act by second day of second term.

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SEC. 1. The circuit court shall exercise chancery jurisdiction in this State in all cases where adequate relief cannot be had at law, and shall, in all things, have power to proceed therein according to the rules, usages and practice of courts of chancery, except when it may be otherwise provided by law, and to enforce their decrees by execution, or in any other manner proper for a court of chancery.

SEC. 2. The said courts shall not have jurisdiction where the matter in controversy does not exceed forty dollars, except in cases of injunction.

SEC. 3. All bills and petitions in chancery shall be adressed to the judge of the circuit court of the proper county in chancery sitting.

SEC. 4. Suits in chancery, concerning real estate, or whereby the same may be affected, shall be brought in the county in which such real estate or greater part thereof is situate, and in other cases in the

county in which the defendant may reside, or in the county within which the plaintiff, or one or all of several plaintiffs, resides, and the defendant or one or all of several defendants are found and served with process; and, if the defendant is a non-resident of the State, in any county where he may be found and served with process.

SEC. 5. In suits for the payment or recovery of money, set-offs shall be allowed, in the same manner, and with like effect, as in actions at law; and the court shall have power to set off one judgment against another between the same parties.

SEC. 6. Every person commencing a suit in chancery shall file in the office of clerk of the circuit court of the proper county a bill or petition setting forth the nature of his complaint.

SEC. 7. The clerk on the application of the complainant or his solicitor, shall, after the bill or petition has been filed, issue a subpœna returnable to the next term of the court, and directed to the sheriff of the county in which service thereof is to be made, if a resident of this State, requiring him to summon the defendant to appear on the return day thereof, and answer the complainant's bill of complaint, and the subpœna may be in the following form:

STATE OF ARKANSAS, }
COUNTY OF ———; } ss,

The State of Arkansas to the sheriff (or coroner, as the case may be) of the county of ———, *Greeting:*

You are hereby commanded to summon A. B. if he be found within your county, to be and appear before the judge of our circuit court in chancery sitting, at a court to be holden at the court house in and for the county of ———, on Monday the ——— day of ——— next after the date hereof, then and there to answer a bill in chancery exhibited against him by C. D., and this he shall in no wise omit, at his peril; and have you then and there this writ.

In testimony whereof I, F. G. clerk of the circuit court in and for the county of ———, have hereunto set my hand and [L. s.] affixed the seal of said court at my office, this ——— day of ———, 18—.

F. G., *Clerk.*

SEC. 8. Where there are several defendants, upon whom process is to be served in different counties, a separate subpœna shall be issued to each county.

SEC. 9. Suits in chancery may be commenced and prosecuted by infants, either by guardian or next friend.

SEC. 10. Infants may be made defendants in suits in chancery, and shall defend by guardian.

SEC. 11. Such next friend or guardian shall be appointed in the same manner as in suits at law.

SEC. 12. In cases where it may be necessary to make the heirs of any decedent defendants, and the names of all or part of them are unknown, and the complainant annexes to his bill an affidavit of his want of knowledge of residence of such heirs, proceedings may be had against them, without naming them, and the court may make such order in relation to notice, as may be deemed proper.

SEC. 13. Service of subpœna in chancery shall be by delivering a copy thereof to each defendant, or by leaving a copy thereof at his usual place of abode, with some free white person, a member of his family, over the age of fifteen years, and informing such person of the contents thereof: and the original bill shall remain in the office of the clerk, for the inspection of all concerned.

SEC. 14. The sheriff shall endorse on the subpœna the time when, served and the manner of service, which shall be signed by him.

SEC. 15. If any complainant or any person for him, shall file with his bill, an affidavit, that part or all of the defendants are non-residents of the State, the court, or the clerk thereof in vacation, shall make an order directed to the non-resident defendants, notifying them of the commencement of the suit, and stating fully the substance of the allegations and prayer of the bill or petition, requiring them to appear on a day therein named, allowing sufficient time for publication, or that the bill or petition will be taken as confessed.

SEC. 16. If in any such case part of the defendants are residents of this State, process shall be issued against them as in other cases.

SEC. 17. When a subpœna shall be issued against any defendant, and the sheriff to whom it is directed shall make return that the defendant cannot be found, upon the court being satisfied that the process cannot be served, an order shall be made, as in the preceding section in case of non-resident defendants.

SEC. 18. Every order against non-resident or absent defendants, shall be published in some newspaper printed in this State, for eight weeks successively, the last insertion to be at least four weeks before the commencement of the term at which the defendants are required to appear.

SEC. 19. If in any suit in chancery, the process shall not be returned executed on the return day thereof, the clerk, if required, may

issue an alias, pluries, or other process, without an order of the court therefor.

SEC. 20. The complainant may cause a copy of the bill or petition, together with a notice of the commencement of the suit, to be delivered to any defendant residing or being without the State, at any place within the United States or the territories thereof, or within the jurisdictional limits of the United States, forty days before the commencement of the term to which said defendant is required to appear.

SEC. 21. Such service may be made by any free white person, over the age of twentyone years, who would be a competent witness in the cause, and being proved by the affidavit or deposition of such person, shall be as effectual as if the bill and subpœna had been served within the limits of the State.

SEC. 22. Every defendant who may be served with a subpœna in chancery thirty days before the return thereof, shall file his exceptions, plead, demur, or answer the bill or petition exhibited against him, within four days after the return day thereof, if the term shall so long continue; and if not, then before the end of the term, unless further time be given by the court, and if he fail to do so, the bill or petition shall be taken as confessed, and an interlocutory decree entered accordingly.

SEC. 23. In all cases where the subpœna shall not have been served on the defendant thirty days prior to the return day thereof, he shall appear and file his exceptions, plead, demur or answer the bill or petition exhibited against him on or before the second day of the term next after the return term of the subpœna; or in default thereof, the complainant's bill shall be taken as confessed, and a decree entered accordingly.

SEC. 24. No exceptions or plea shall be filed after an interlocutory decree; but if the defendant appear within the first three days of the next term after such decree is entered, and show good cause for not before appearing, the decree may be set aside, and the defendant allowed to file his answer, or demurrer to the bill.

SEC. 25. All exceptions to bills, petitions, and answers, shall be in writing, and signed by the party excepting, or his solicitor, and shall be determined without delay.

SEC. 26. If any of the exceptions filed to a bill be allowed, the complainant shall pay costs, and the defendant shall plead, demur or answer the residue of the bill.

SEC. 27. If the exceptions are overruled, the defendant shall pay costs, and shall immediately plead, answer or demur to the bill, or in default thereof, the bill shall be taken as confessed.

SEC. 28. A defendant may plead as many several matters to a bill or petition as he may deem proper for his defence, so that he does not plead and demur, or plead and answer to the same part of the bill, except where, by the rules and practice in chancery, an answer is necessary to support a plea.

SEC. 29. In any suit where the bill expressly charges fraud, a plea to such charge must be accompanied with an answer fortifying the plea, and specially denying the allegations of fraud.

SEC. 30. If a plea be found for the defendant, or such plea be allowed, the complainant shall pay the costs ; but if the matter of the plea be found against the defendant, or be overruled, he shall pay the costs, and no other plea shall be filed, and the defendant shall without delay answer the bill, or in default thereof, the part unanswered shall be taken as confessed.

SEC. 31. Demurrers shall be considered and determined without delay, and if sustained in whole or in part, the complainant shall pay costs ; if overruled, the defendant shall pay costs, and file his answer immediately, or in default thereof, so much of the bill as remains unanswered, shall be taken as confessed.

SEC. 32. Every defendant shall answer fully all the allegations and interrogatories of the complainant, except such as are not required to be answered, by reasons of exceptions, plea or demurrer thereto allowed.

SEC. 33. Every answer filed by any defendant to the bill or petition exhibited against him, shall be verified by affidavit, unless by consent of all the parties to the suit.

SEC. 34. Any defendant may in his answer, introduce any new matter which he may deem material for his defence, and may exhibit interrogatories, and call on the complainant to answer the same on oath, and the complainant shall file his answer in such time as may be prescribed by the rules of the court.

SEC. 35. If the complainant shall fail to answer such interrogatories, his bill or petition shall be dismissed with costs, or the new matter set out in the defendant's answer shall be taken as confessed, and a decree entered accordingly.

SEC. 36. The complainant's answer to the interrogatories filed by

the defendant, shall be evidence in the same manner as the defendant's answer to the bill.

SEC. 37. Where it is necessary for the defendant to bring a new party before the court, he shall state it in his answer, and insert interrogatories for him to answer ; and a subpœna shall be issued, and other proceedings had, as in case of other defendants.

SEC. 38. Affidavits when required to verify any bill, petition or answer, may be made before the clerk of the court in which the suit is pending, or before any judge, master in chancery, or justice of the peace ; the official character of such officer, if not of this State, must be attested by the seal of the State, territory, kingdom or empire, of which he is an officer, or the seal of some court of record within the same.

SEC. 39. Exceptions to the answer and interrogatories of the defendant, shall be filed within three days after the filing of the answer or the interrogatories, and not thereafter, and when filed, shall be considered and determined without delay ; and, if overruled, the complainant, and, if allowed, the defendant shall pay the costs.

SEC. 40. When an answer shall be adjudged insufficient, the defendant shall file a further answer, within such time as the court shall direct ; and, in default thereof, the bill shall be taken as confessed.

SEC. 41. When an amended answer is filed after exceptions to the original answer, no further exceptions shall be filed, nor shall time be given to the complainant to consider of the answer or object to the same, but the court shall immediately inspect such amended answer, and adjudge it sufficient or insufficient as to the points to which the defendant had been ordered, under the exceptions allowed, to answer ; and if the court adjudge such amended answer insufficient, the defendant shall pay double costs, and answer instanter ; or in default thereof, the bill shall be taken as confessed.

SEC. 42. If the third answer be filed and adjudged insufficient, the defendant shall pay treble costs, and no further answer shall be filed, and the bill shall be taken as confessed.

SEC. 43. No complainant shall be allowed to dismiss his bill, after a cross bill has been filed, without the consent of the defendant.

SEC. 44. The complainant shall not be compelled to file his answer to any cross bill or interrogatories exhibited by the defendant, until the defendant shall have filed a sufficient answer to the complainant's bill.

SEC. 45. All pleas and demurrers shall be disposed of, before proceeding on the defendant's answer.

SEC. 46. Replications shall be general, with the like advantage to all parties as if special, and shall be filed within three days after the answer.

SEC. 47. When a replication is filed, the cause shall be at issue, and stand for trial at the next term of the court after replication filed.

SEC. 48. If the replication be not filed within three days after the filing of an answer, the cause shall be set for trial on bill and answer; in which case, the answer shall be taken as true, and no evidence shall be received, unless it be matter of record, referred to in the answer.

SEC. 49. When any complainant shall seek a discovery respecting the matters charged in the bill, the disclosures made in the answer shall not be conclusive, but, if replication be filed, may be contradicted, or disproved as other testimony, according to the practice of courts of chancery.

SEC. 50. If either party shall rely on any record, deed or writing, the substance thereof shall be stated in his bill, answer, or plea, in the same manner as is required in pleading at law; and he shall file with his bill, answer or plea, as exhibits, an authenticated copy of such record, and a true copy of such deed or writing, and hold the original, subject to the order of the court, and inspection of other parties, in term time, if within his power.

SEC. 51. If either party cannot produce a deed or writing relied on by him, he shall so state in his bill, answer or plea, together with the reasons why he cannot produce the same; and if the reasons be sufficient, he may file the best evidence in his power of the contents of such deed or writing.

SEC. 52. The court shall have power, on sufficient cause shown by affidavit, due notice of the application being given to the adverse party, to require the parties or either of them, to produce books, deeds, or other writings in their power, which are alleged to contain evidence pertinent to the matter in controversy.

SEC. 53. If either party shall fail or refuse to comply with such order, and shall not satisfy the court that it is not in his power to produce the books, deeds or writings, nor show other sufficient excuse, the court may take the allegations in relation to the books, deeds or writings not produced, as confessed, or may proceed against the party in default, by attachment.

SEC. 54. All bills, petitions, answers, exceptions, pleas, demurrers and replications, shall be signed by the party filing them, or his

solicitor; and the clerk shall endorse thereon, the day of the filing thereof; and, if filed in term time, note the same in the minutes.

SEC. 55. The court may extend the time for pleading, demurring, answering or replying, on good cause shown.

SEC. 56. The parties may be allowed to amend their bills, petitions, pleas, demurrers, answers and replications, on payment of costs, and on such other terms as the court may think proper, if the adverse party be not surprised or delayed thereby.

SEC. 57. After publication, subpœna executed, or notice given, according to the provisions of this act, in any suit, the amendment of the bill, answer, or other pleading, shall not require a new subpœna.

SEC. 58. The parties shall mark and number all papers and documents, relied on in any cause, and filed as exhibits.

SEC. 59. Within such time as the court shall by rule require, before the hearing of a cause at issue, each party shall distinctly set down the allegations made by him, and denied by the other party, or which, by the course of proceeding in chancery, he is bound to support by testimony; and issues shall be made up thereon.

SEC. 60. All causes shall be tried, heard and determined, at the next term after the term they are set for hearing, or put at issue by replication, unless good cause be shown for a continuance; and, at the hearing, the testimony shall be confined to the issues made up as required in the preceding section.

SEC. 61. If the complainant in any suit in chancery, on the calling thereof, shall fail to prosecute the same, and the defendant shall fail to appear, the court may in its discretion, either enter a nonsuit against the complainant, or continue the cause.

SEC. 62. The clerk of the circuit court shall, thirty days before the commencement of each term, make out a docket of all causes pending in the chancery side of the court, in the order in which they stand in the course of proceeding, briefly noting the previous steps taken in each cause, and the state of the pleading.

SEC. 63. The clerk shall make out and set up in some conspicuous place in his office, a list of all causes on the chancery docket fifteen days before the first day of the term of each court, for the information of the parties and their solicitors.

SEC. 64. If there be an issue as to matter of fact, which shall render the intervention of a jury necessary, the court may direct a jury to be empanelled for a trial of the same, and the verdict shall be entered of record, and made use of in the hearing of the cause.

SEC. 65. The court may award a new trial of any issue, upon good cause shown; but not more than two new trials of the same issue shall be granted to any one party.

SEC. 66. After replication filed, or the cause set for hearing, the parties may proceed to take the testimony of witnesses in support of the bill or answer.

SEC. 67. The testimony of witnesses, to be submitted in any cause in chancery, shall be taken in writing, unless otherwise directed by the court at the time the cause is set for hearing.

SEC. 68. Depositions to be read in evidence in any proceeding in chancery, shall be taken in the same manner as depositions are required to be taken in proceedings at law.

SEC. 69. The rules of evidence shall be the same in chancery as at law.

SEC. 70. Exceptions may be taken to the opinion of the court, during the progress of any cause, or the trial of any issue in chancery, and bills of exceptions shall be allowed, signed, and made a part of the record, in the same manner as at law.

SEC. 71. The several circuit courts of this State shall have power to appoint in each county a master in chancery, who shall hold his office during the pleasure of the court.

SEC. 72. Each master in chancery shall have power to take depositions, both in law and in equity, and to administer oaths, and to compel the attendance of witnesses, and to do and perform all such other ministerial acts as are commonly performed by a master in chancery.

SEC. 73. There shall be but one master at a time in any one county, unless the master be of kin to either of the parties, or is interested in any cause, or is absent from the county: in such cases a special master may be appointed.

SEC. 74. Every master before entering on the duties of his appointment, shall be sworn in open court, faithfully and impartially to perform the duties of his appointment, which shall be entered on the minutes.

SEC. 75. All matters of account pending in chancery, may be referred by the court to the master; and he shall audit and adjust the same, and make report thereof to the court.

SEC. 76. When any matter shall be referred to the master, or he is required to take testimony in a cause, he shall appoint the time and place for proceeding therein, and give notice thereof in writing to the

parties or their solicitors; and if either party, being notified, shall fail to appear, he may proceed ex parte.

SEC. 77. The master may adjourn his sittings from time to time, and issue attachments to compel the attendance of witnesses, who, being summoned, fail to attend.

SEC. 78. He shall reduce to writing the testimony of all witnesses examined by him, and shall have power to commit such witnesses as may refuse to testify.

SEC. 79. Depositions regularly taken in a cause, may be read in evidence before the master, where the cause has been referred to him.

SEC. 80. When accounts have been referred to the master, after having heard the testimony adduced by the parties, he shall state them truly according to his opinion, and if the parties require it, also, according to the views of each of them.

SEC. 81. If either party shall except to the competency of any witness, or to the admission or exclusion of any evidence, the master, if required, shall state the particulars of the exceptions in his report.

SEC. 82. The master shall report on all cases referred to him as speedily as possible, reciting in his report the order of the court referring the cause to him, the notice to the parties, the time and place of stating the account, or taking depositions, and all other proceedings had therein, and return the same together with the testimony, to the court.

SEC. 83. The master's report shall be in sheets, neatly and securely stitched together.

SEC. 84. All exceptions to the master's report shall be in writing, and shall be made within four days after the first day of the term of the court at which the report is made, if the term so long continue, and if not, before the end of the term, and shall be disposed of without delay.

SEC. 85. The report shall stand good, except such parts as are excepted to, unless it shall appear on the face of the report, or from the evidence in the cause, that it is erroneous.

SEC. 86. Exceptions may be allowed to the master's report, where he admitted incompetent testimony, or where he excluded competent testimony, or for any other cause which may be adjudged good by the court, or when it shall be apparent from the face of the report, that injustice has been done.

SEC. 87. When exceptions are allowed, the court may refer the report to the master again, with such instructions as may be necessary.

SEC. 88. In all cases where no exceptions are filed to the master's report, within the time prescribed in this act, or where the exceptions have been overruled, a decree shall be entered up accordingly.

SEC. 89. Where exceptions have been allowed to the master's report, and the account shall have been restated by the court or master, a decree shall be entered accordingly.

SEC. 90. All notices required to be given by the master or other person, in the progress of a cause, shall be served by reading the same, or delivering a copy thereof, to the person to be notified, or his solicitor; or by leaving a copy at his usual place of abode, with some white person over the age of fifteen years; and may be served by the sheriff, or any other officer authorized to serve process, or by any person over the age of twentyone years, who would be a competent witness in the cause, and in the latter case, the return of the service must be verified by the affidavit of the person making it.

SEC. 91. When the cause of action shall survive, no suit in chancery shall abate by the death of the complainant or defendant, or one of them where there are more than one; but such death being suggested and shown to the satisfaction of the court, the suit shall proceed in favor of the surviving parties.

SEC. 92. When one or more of the complainants or defendants die, and the cause of action shall not survive, the suit shall abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

SEC. 93. If the complainant or defendant in a suit die, the suit shall not thereby abate, but may be revived in the name of the legal representative of the deceased party.

SEC. 94. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant; but the death being suggested, the court, or the clerk thereof in vacation, shall, on the application of the complainant, issue a subpœna in the nature of a scire facias against all persons residing in the State so to be made parties, and also make an order of publication, as to all such as are non-residents, in the same manner as provided in the case of original defendants.

SEC. 95. The subpœna shall be served and returned, and the publication made, in the same manner, and with the like effect, to all intents and purposes, as is required in cases of summoning or notifying original defendants.

SEC. 96. If any person so summoned or notified shall not, within

such time after such service or notice of publication as is allowed in the case of original defendants, appear, put in an answer or disclaimer, the court may cause the appearance to be entered.

SEC. 97. In such case, the answer of the deceased party shall be deemed the answer of the representative, and if there be no answer, proceedings may be had in all respects, against such person, as if he had been originally a defendant, and the court may, in its discretion, order the bill to be taken as confessed, or compel an answer by attachment or otherwise.

SEC. 98. If the deceased party shall have answered, and the surviving party shall deem it necessary to obtain a further answer from his representatives, the petition for a revival shall state the matters as to which a further answer is required; and a copy of such petition shall be annexed to the subpœna; and the substance stated in the order of publication.

SEC. 99. In such case, if the representative shall not appear, and put in such further answer or disclaimer, the petition may be taken as confessed, or the court may compel an answer by attachment or otherwise.

SEC. 100. When a complainant shall die, and the cause of action does not survive, his representatives, on the affidavit of such death, and on motion in open court, may be made complainants in the suit, and may be permitted to amend the bill if necessary.

SEC. 101. The defendant may be compelled to answer such amended bill, and the cause shall proceed to issue and hearing as in other cases.

SEC. 102. When the representatives of a deceased complainant, where there were two or more complainants, shall not cause themselves to be made complainants on or before the second day of the term after the death is suggested, the surviving complainant may proceed to make them complainants in the same manner that the representatives of deceased defendants are made parties.

SEC. 103. If there be no surviving complainant, or he shall neglect or refuse to proceed against the representatives of the deceased complainant or defendant, the court may, upon the petition of the original defendant, order such representatives to show cause, at a certain day to be named in the order, why the suit should not stand revived in their name, or the bill be dismissed, as far as the interest of such representatives is concerned.

SEC. 104. If no such cause be shown, the court, on proof of rea-

sonable service or publication of such order, may order the suit to revive in the name of such representatives, or dismiss the bill as to them.

SEC. 105. If one defendant die, and the cause of action shall not survive, and the complainant shall neglect or refuse to procure an order for the renewal of the suit, the court may order it to stand revived, upon the petition of the surviving defendant, against the representatives of the deceased party.

SEC. 106. In such case, the surviving defendant may proceed against such representatives in the same manner as a complainant, to compel them to appear, abide the answer of the deceased party, or answer, if an answer be required, or have the bill taken as confessed against them, and the court may, in its discretion, stay the suit against him until such proceedings shall be had.

SEC. 107. In all cases where the representatives of a deceased complainant or defendant shall not be made parties, according to the provisions of this act, on or before the second day of the second term of the court after the suggestion, the suit shall abate as to such deceased party and the interest of his representatives therein, and the cause shall proceed in favor of and against the survivors; but if, in such case, there be no surviving complainant or defendant, the suit shall be dismissed.

SEC. 108. If a female party to a suit in chancery marry, at any time before a final decree, the suit shall not thereby abate, but her husband may, on his own application, be made a complainant or defendant with her, on the order of the court in which the suit is pending, to be granted on due proof of the marriage, and after notice to the adverse party or his solicitor.

SEC. 109. Such husband may also be made a party with his wife, on the application of any other party to the suit, by petition, on proof of the marriage, and notice to such husband and wife, and the other parties to the suit, if any; but in such case, the husband may contest all facts in the same manner as if he had been originally a party.

SEC. 110. When any public officer, trustee, guardian, executor, or administrator, as such, shall be a party to any suit in chancery, and shall die, resign, or be removed from his office or trust, before a final decree, the suit shall not thereby abate, but his successor may, on his own application, or on the application of any other party to the suit, be made a party by the order of the court, in the same manner as the representatives of a deceased party, as herein before provided.

SEC. 111. The provisions of this act, in relation to the bringing in the representatives of a deceased person, shall be construed to apply to all persons who may have become interested in the cause of action by the death of a party.

SEC. 112. No such representatives of a deceased party, or other person interested in the cause of action, shall be barred by any order or decree, in any cause to which they do not become, or are not made, parties.

SEC. 113. When a bill shall have been taken as confessed, where the defendant was summoned, on account of a failure to answer, or for any other cause, the matter may be referred to the master, to take proof, if necessary, of the facts and circumstances of the bill.

SEC. 114. Whenever the bill shall have been filed for the payment or satisfaction of any sum of money, the court shall direct the claimant to be examined by the master, as to any payments that may have been made to him, or to any other person for his use, on account of the demand mentioned in the bill, and which ought to have been credited.

SEC. 115. The master shall report, as speedily as possible, to the court, the proofs and examination had before him, and the court shall thereupon enter up a final decree.

SEC. 116. Process may then be issued to compel the performance of such decree, either by the sequestration of the real or personal estate, or such part thereof as may be sufficient, or where any specific estate or effects are demanded by the bill, by causing possession of the property demanded to be delivered to the complainant.

SEC. 117. When any interlocutory decree, taking a bill as confessed, shall be made, and a final decree entered thereon, against any defendant who shall not have been summoned as required by this act, and who shall not have appeared to the suit, or have been made a party as the representative of one who may have been summoned, or who may have appeared, such final decree may be set aside, if the defendant shall, within the time hereinafter limited, appear, and, by bill of review, verified by affidavit, show good cause for setting aside such decree.

SEC. 118. If the complainant shall, at any time after such final decree, serve the defendant, within any of the United States, or the territories thereof, or in any other place within the jurisdictional limits of the United States, with notice of the suit, and the decree therein, and such defendant shall not, within one year after such service, bring

his bill of review, the court on proof of such notice, shall make an order that it stand absolute.

SEC. 119. If such bill of review be not filed within five years after such final decree, the same shall stand absolute, whether notice thereof be given or not.

SEC. 120. No such decree shall be set aside, unless the bill of review either show that there is no equity in the original bill, or contain such denials or allegations, as amount to a defence to the merits, and then only on condition that the defendant answer the bill within such reasonable time as the court may direct.

SEC. 121. If the answer is filed in the time so limited, the cause shall proceed as in other cases; but if the answer be not filed as required, the decree shall be made absolute.

SEC. 122. No sale or conveyance upon a bill of foreclosure, or satisfaction of a mortgage regularly made, under a decree of the court, shall be affected or prejudiced by the setting aside any decree, on the appearance of the defendant, as herein before provided; but the court may in such case, decree an account for all moneys received by the complainant by virtue of such decree, over and above the amount justly due him, with costs, if the equity of the case requires it.

SEC. 123. In all cases where the court may decree the conveyance of real estate, or the delivery of personal property, they may, by decree, pass the title of such property, without any act to be done on the part of the defendant, where it shall be proper, and may issue a writ of possession, if necessary, to put the party in possession of such real or personal property; or may proceed by attachment or sequestration.

SEC. 124. When an unconditional decree shall be made for a conveyance, release, or acquittance, and the party required to execute the same shall not comply therewith, the decree shall be considered and taken to have the same operation and effect, and be as available, as if the conveyance, release or acquittance had been executed conformably to the decree.

SEC. 125. All decrees for money shall be a lien on the lands and tenements of the party against whom the decree is entered, to the same extent and under the same limitations, as a judgment at law.

SEC. 126. When complete justice cannot be done, the court may, on the petition of the party entitled to the benefit of a final decree, cause an inquiry to be made by a jury, of the amount of damages which ought to be paid in lieu of the performance of the decree, and may

render a decree for the damages so assessed, and award execution thereon.

SEC. 127. If a bill of discovery be filed, for the purpose of aiding a suit at law, where the evidence in support of such suit rests alone within the knowledge of the complainant and defendant, either in whole or in part, and the subpœna shall have been served thirty days before the return day thereof, the defendant shall appear, and file his answer, on or before the last day of the term of the court at which the bill is returnable; and in default thereof, the bill shall be taken as confessed.

SEC. 128. If the subpœna shall not have been served thirty days before the return thereof, the defendant shall appear, and file his answer, on or before the second day of the term next after the return of the subpœna; and in default thereof the bill shall be taken as confessed.

SEC. 129. The allegations in any bill of discovery taken as confessed, may be offered in evidence in the suit at law, in aid of which the discovery was prayed, as facts admitted by the defendant.

SEC. 130. A bill of discovery may be filed, and the defendant shall be compelled to answer such bill, where the defendant is charged with having given to another a warrant of attorney to confess a judgment, or, having confessed or suffered a judgment purporting to be for a demand, where nothing, or only part of the sum mentioned in such warrant of attorney, or judgment, is due, with intent to defraud the just creditors of such defendant, or with having conveyed his property, real or personal, to another person, for the purpose of putting the same out of the reach of his creditors, or to hold the same in some secret trust and confidence, for the benefit of the defendant.

SEC. 131. The person in whose favor the warrant of attorney was made or the judgment confessed, or to whom the conveyance may have been made, and all other persons concerned in any manner therein, shall be made defendants to the bill, and shall be compelled to answer the same.

SEC. 132. No answer made to any bill under the provisions of the two preceding sections, shall be read in evidence against the defendant, on the trial of an indictment for any fraud charged in the bill.

SEC. 133. Whenever an execution, founded upon any judgment or decree, shall be issued to the proper officer, and be returned as to the whole or any part thereof, that the defendant hath no property in his county to satisfy the same, the court, upon bill filed, shall have

power to subject to the satisfaction of such judgment or decree any choses in action belonging to the defendant, and also any equitable or legal interest in any estate, real, personal or mixed, belonging to the defendant, and for that purpose may bring other parties before the court, and make such decree as may be equitable, under the power conferred by this act; and the court shall adjust and settle the title to such land, and decree a conveyance to such person as may become the purchaser; and do complete justice in the case.

SEC. 134. Nothing in the preceding section contained, shall be construed to extend to those articles in possession of the defendant which are exempt from execution by law.

SEC. 135. Whenever an execution founded on any judgment or decree, shall be directed to the county in which the defendant resides, and shall be returned, that the defendant has no property to satisfy such execution, either in whole or in part, it shall be lawful for the plaintiff to file in the circuit court of the county in which the judgment was rendered, a bill to compel the defendant, upon oath, to make a full and complete discovery of all choses in action or other property, real, personal or mixed, in which he may have an interest, stating the nature and amount of such interest, and such defendant shall answer said bill in the same time as is prescribed in this act for answering bills in other cases; and on failure so to do, the court may compel an answer by attachment.

SEC. 136. When, by the answer of the defendant, it shall appear that he hath an interest in any chose in action, or any other property, real, personal or mixed, the complainant may take such other steps as may be necessary to bring any other proper party before the court, and the court shall have power to subject the interest of the defendant in such chose in action, other property or estate, or so much thereof as may be necessary to the satisfaction of the complainant's demand.

SEC. 137. If any person shall deem himself aggrieved by any final decision, order or decree of any court exercising chancery jurisdiction, and if such person shall pray an appeal to the supreme court, during the term at which such decision, order or decree is made, such appeal shall be granted in the same manner as appeals are granted in suits at law.

SEC. 138. The supreme court, or any judge thereof in vacation, upon inspection of the record, may, by special order for that purpose, grant an appeal, at any time within one year after making the final decision, order or decree in the cause.

SEC. 139. The appeal, when the appellant is not an executor, administrator or guardian, suing or sued, shall not operate so as to stay the proceedings, unless a recognizance be entered into before the supreme or circuit court, or a judge thereof, and filed in the office of the clerk of the circuit court.

SEC. 140. Such recognizance shall be entered into by the appellant or some legally authorized person for him, with one or more sufficient sureties, to be approved by the court or judge granting the appeal, in a sum sufficient to secure the performance of the decree, and all costs and damages, if affirmed, conditioned that the appellant shall prosecute his appeal with effect, and shall perform such decree as shall be made by the supreme court therein, and pay the damages and costs which may be adjudged against him.

SEC. 141. The supreme court shall hear and determine all such appeals, and if said court shall reverse the decision, order or decree of the circuit court, the supreme court shall make such decision, order or decree, with costs, as the circuit court ought to have made, which when certified to the circuit court shall be entered up as the decision, order or decree of said court, and shall be carried into effect in the same manner as if the decree had been made by the circuit court.

SEC. 142. If such decision, order or decree, be affirmed by the supreme court, such affirmance shall be certified to the circuit court from which such appeal was taken, and the decision, order or decree appealed from, shall be carried into effect in the same manner as if no appeal had been granted.

[Approved: December 14, 1837.]

CHAPTER 24.

CHANGE TICKETS.

SECTION
1. Holder or owner of may sue, whom and where.
2. Judgment, how to be given, and execution.
3. No bar to such suit, that payment is to be made, only when the sum of five dollars is presented.
4. No appeal, stay of execution, certiorari,

writ of error or injunction to be allowed.
5. Act "to prevent the circulation of private notes," when to be in force.

SEC. 1. The holder or owner of any change ticket, bill, or small note, issued for the purpose of change, or otherwise, shall have the right to sue the drawer, issuer, or endorser, of such change ticket or tickets, bill or bills, or small note or notes, before any justice of the peace in this State.

SEC. 2. The justice of the peace before whom any suit may be brought, under the provisions of this act, shall, in all cases, where he is satisfied that the defendant in such suit, did draw, issue, sign, or endorse the change ticket, bill or small note, sued on, and that the same is not paid, forthwith give judgment for the plaintiff, for the amount of such change ticket, bill or note, sued on, and shall forthwith grant the plaintiff an execution on the judgment, if the plaintiff require the execution.

SEC. 3. It shall not be any bar to any plaintiff obtaining a judgment on any change ticket, bill, or small note, on account of any conditions specified or set forth in any change ticket, bill or note, sued on, that payment will be made when the sum of five dollars is presented, but the justice shall give judgment for the amount of the change ticket, bill or small note, sued on.

SEC. 4. The justice before whom any judgment may be obtained, by the provisons of this act, shall not grant or allow any appeal, or stay of execution, nor shall the defendant be permitted or allowed to have any stay of execution, appeal, certiorari, writ of error, or injunction, but shall abide the judgment of the justice.

SEC. 5. The act passed at this session of the General Assembly, entitled "An act to prevent the circulation of private notes in this State," approved November twentyfifth, eighteen hundred and thirty-seven, shall take effect and be in force, from and after the first day of March next.

[Approved and in force: February 14, 1838.]

CHAPTER 25.

CLERKS OF THE CIRCUIT COURT.

SECTION
1. Election for, and term of service.
2. Bond, and condition thereof.
3. To be approved and recorded, and where filed.
4. To be clerk of county court, and of court of probate, and recorder.
5. In what cases new bond may be required.
6. On failure to give new bond, office vacant.
7. Bond to be recorded by secretary of state, and copy of to be evidence.
8. Duty of clerk to preserve property and provide books, &c.
9. Office of, where kept.
10. In case of danger, office to be removed.
11. Duties of, generally.
12. Deputies, how appointed and qualified, and powers of.
13. Penalty of clerk for misfeasance, &c.
14. Charges against clerks, by whom prosecuted, and the office filled *pro tempore*.
15. Charges, how prosecuted.
16. Service of notice and copy of charges.
17. Proceedings thereafter.
18. Trial, jury, verdict, and order thereon.
19. Records, books, &c. to be delivered over on death, resignation or removal.
20. Settlement to be made by clerk, his executor or administrator, and how compelled.
21. Clerk to reside in county of which he is clerk.

SEC. 1. The qualified voters of each county in this State, at the time of electing members of the General Assembly, shall elect a clerk of the circuit court, who shall hold his office for the term of two years and until his successor is elected and qualified.

SEC. 2. Each clerk of the circuit court shall enter into bond, with good and sufficient security, to the State, in any sum not less than three thousand dollars, conditioned that he will well and truly perform the duties of his office, and pay over to the proper officer or person all moneys that may come to his hands by virtue of his office, and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, papers, records, seals and furniture belonging to his office.

SEC. 3. Such bonds shall be approved by the county court in term time, or by the presiding judge thereof in vacation, and shall be recorded in said county, and shall be filed in the office of the secretary of state.

SEC. 4. Each clerk of the circuit court shall by virtue of his office be clerk of the county court, and of the court of probate, and recorder for his county.

SEC. 5. If, at any time, the county court shall become satisfied that the security in the bond of any clerk of the circuit court is insufficient, or in danger of becoming insufficient, or that the penalty of such bond is not large enough, such court shall cause such clerk to enter into a new bond with sufficient security, which shall be deposited in the office of the secretary of state.

SEC. 6. If any clerk shall fail to give such bond within fifteen days after he may be required by the court to give such new bond, his office shall be deemed vacant, and shall be filled accordingly.

SEC. 7. All bonds of clerks deposited with the secretary of state, shall be by him recorded in a book to be kept for that purpose; and a copy of such bond or of the record thereof, certified by the secretary of state, under his official seal, shall be received as evidence in the same manner as the original, in any court, without proof of the execution.

SEC. 8. Each clerk shall preserve the seal and other property belonging to his office, and shall provide suitable books, stationery, furniture and other things necessary for his office.

SEC. 9. Each clerk of the circuit court shall keep his office at the seat of justice of the county for which he is clerk, and shall there keep the records, papers, seals and property belonging to his office, and shall there transact his business.

SEC. 10. In case of danger from an invading enemy, any clerk may remove the records, papers and other things belonging to his office, to some secure place until the danger ceases.

SEC. 11. Every clerk shall seasonably record the judgments, rules, orders and other proceedings of the courts, make a complete alphabetical index thereto, issue and attest all processes when required by law, keep a perfect account of all arrearages coming into his hands and accruing to the county or State on account of taxes, fines or otherwise, make settlement with the proper court at each stated term and pay over all balances.

SEC. 12. Each clerk may appoint one or more deputies, to be approved of by the circuit court, who shall possess the like qualifications and take the like oaths as their principals, and may, in the name of their principals, perform the duties required of their principals, and all clerks shall be responsible for the conduct of their deputies.

SEC. 13. If any clerk shall knowingly and wilfully do any act contrary to the duties of his office, or shall knowingly and wilfully fail to perform any act or duty required of him by law, he shall be deem-

ed guilty of a misdemeanor in office, and upon conviction thereof shall be removed from office.

SEC. 14. When the circuit court shall be satisfied from its own knowledge, or from the information of others on oath, that the clerk of such court has been guilty of any misdemeanor in office, or shall be incapable of discharging the duties of his office according to law, or shall be a drunkard, such court shall give notice thereof to the attorney for the State prosecuting for such circuit, stating the charges against such clerk and requiring him to prosecute the same: and such clerk may be suspended from office until a trial can be had, in which case the court shall appoint a temporary clerk who shall possess the same qualifications, take oath and give bond as required of clerks, possess the same powers, perform the same duties and receive the same fees, and continue in office until the clerk resume his office or a successor shall be qualified.

SEC. 15. When any attorney for the State shall be required to prosecute charges against any clerk, if the offence is indictable he shall submit the same to the grand jury in order that an indictment may be found: and if the charges be for an offence not indictable, he shall make the same out and file them in the court and cause a copy thereof to be served on such clerk together with a notice requiring him to appear before the circuit court of the county in which such clerk may reside, on some specified day in the term, and answer the same.

SEC. 16. Such notice and copy of the charges shall be delivered to such clerk at least fifteen days before the day appointed for the answering thereof.

SEC. 17. The attorney for the State shall cause witnesses to be summoned to support such charges, or any indictment that may have been found against such clerk, and shall prosecute the same with speed; and such clerk shall appear and plead at the next term of the court, unless further time be given for that purpose.

SEC. 18. If such clerk shall plead "not guilty" to such charges or indictment, the court shall require a jury to be summoned to try the issue joined; and if the jury find such clerk guilty, or if he shall plead guilty to the charges or indictment, it shall be the duty of the court to enter up an order removing such clerk from office, and from that time he shall cease to be clerk of such court, and the vacancy shall be filled according to law.

SEC. 19. If any clerk of the circuit court resign, be removed from office, or die, he or his executors or administrators shall deliver all re-

cords, papers, books, files, seals and other things belonging to his office, to his successor as soon as he is qualified, who shall take charge of, and receipt for the same.

SEC. 20. Any clerk who shall resign or be removed from office, or the executor or administrator of any clerk who may die, shall render to the proper court, at the next term after such death, resignation or removal, a perfect account, on oath, of all arrearages of moneys received by him by virtue of his office, not before accounted for, and shall settle with said court as if said clerk was still in office; and for that purpose free access may be had to said office, and the records, books, papers and files therein: and the court may compel such settlement and enforce the payment of any balance by attachment.

SEC. 21. Every clerk of the circuit court shall reside in the county for which he is clerk.

[Approved: February 20, 1838.]

CHAPTER 26.

CLERKS OF SUPREME COURT.

SECTION
1. Appointment, term of service, place of keeping office.
2. Bond of, and form thereof.
3. To preserve property, provide books, &c.
4. Duty of, as to keeping records, &c.
5. To issue and seal process, &c.
6. To appoint deputies, and their powers.
7. To be responsible for their deputies.

SEC. 1. The supreme court shall appoint its own clerk, who shall hold his office for the term of four years, and until his successor shall be qualified, and shall keep his office at the place where said court may hold its term.

SEC. 2. The clerk of the supreme court shall, before he enters on the duties of his office, enter into bond to the State in any sum not less than three thousand dollars, with good and sufficient security, to be approved by the court in term time, or by either of the judges thereof in vacation, conditioned for the faithful discharge of his office, and seasonably to record the judgments, decrees, orders, and proceedings, of such courts, and do and perform all other things that may be required of him by law, and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, papers, records, seals

and furniture, belonging to his office; which bond shall be filed in the office of the secretary of State.

SEC. 3. Such clerk shall preserve the seal and other property belonging to his office, and shall provide suitable books, stationery, furniture, and such other things as, in the opinion of the court, may be necessary for his office.

SEC. 4. It shall be the duty of such clerk, with as little delay as possible, to record the judgments, decrees, rules, orders, and proceedings, of the court, together with the opinion of the court, in all cases where a written opinion may have been delivered, and to make a complete alphabetical index to all his books of records.

SEC. 5. He shall issue and attest all process, and affix the seal of his court thereto.

SEC. 6. He may appoint one or more deputies, to be approved by the court: and every deputy so appointed, may, in the name of his principal, do and perform all the duties required of his principal.

SEC. 7. The principal shall be responsible for the conduct of his deputy.

[Approved: March 5, 1838.]

CHAPTER 27.

COMMISSIONS.

SEC. 1. What officers shall be commissioned and by whom.

SEC. 1. Each judge of the supreme court and circuit court, presiding judge of the county court, secretary of state, State treasurer and auditor, attorney for the State, sheriff, coroner, clerk of the circuit court, county treasurer, county surveyor, notary public, justice of the peace, and militia officer, elected or appointed in this State, shall be commissioned by the governor.

[Approved: November 29, 1837.]

CHAPTER 28.

COMMON AND STATUTE LAW OF ENGLAND.

SECTION
1. Up to the fourth year of James I. in force in this State.
2. Crimes and misdemeanors, not punishable by statutory provision of this State, punished under the common and statute law of England, but only by fine and imprisonment.

SEC. 1. The common law of England, so far as the same is applicable and of a general nature, and all statutes of the British parliament in aid of, or to supply the defects of the common law, made prior to the fourth year of James the First, (that are applicable to our own form of government,) of a general nature and not local to that kingdom, and not inconsistent with the constitution and laws of the United States, or the constitution and laws of this State, shall be the rule of decision in this State, unless altered or repealed by the General Assembly of this State.

SEC. 2. In cases of crimes and misdemeanors, committed in this State, the punishment of which has not been provided for by statute, the court having the jurisdiction thereof, shall proceed to punish the offender under the provisions of the common or statute law of England, put in force in this State, by this act; but the punishment in such cases, shall only be fine and imprisonment, and in such cases the fine shall not exceed one hundred dollars, and the imprisonment shall not exceed three months.

[Approved: December 9, 1837.]

CHAPTER 29.

CONSTABLES.

SECTION
1. How elected, and term of service.
2. In case of tie, election how determined.
CONTESTED ELECTION.
3. Candidate wishing to contest election to give notice, and how.
4. Time of taking depositions therefor.
5. Power of justice to issue subpœnas and compel attendance of witnesses.
6. Justice to take depositions, and certify them to county court.

SECTION
7. No testimony to be received, except as to points specified in notice, a copy of which to be enclosed with the depositions.
8. Notice, how to be served.
9. Judgment of county court upon the hearing.

OFFICIAL BOND.

10. *Constable* to give bond and security, and condition thereof.
11. How to be approved.
12. On failure to enter into, office to be deemed vacant, and how filled.
13. To be filed and recorded, and may be sued on.
14. Copy of to be evidence, and limitation of action on.
15. Duties and powers of constable.
16. May appoint deputies, to be approved by county court.
17. Penalty for not paying over money, and for not returning execution, and how recovered and collected.
18. Notice of motion for judgment against, how served.
19. And such failure to be ground of removal from office.
20. Copy of charges, and notice, to be served on him, and how.
21. May be sued with his securities on his official bond for bonds, notes, &c. delivered to him for collection, and not paid over or returned.
22. Not responsible when suit has been brought.
23. When township is divided, how supplied with constables.
24. Vacancies in office of, how filled.
25. To make return of retailers of liquor, and penalty for failure.
26. May execute civil process throughout the county, and mileage how allowed.

SEC. 1. The qualified voters of each township in this State, at the time of electing members of the General Assembly, shall elect one constable, who shall hold his office for the term of two years, and until his successor is elected and qualified.

SEC. 2. In case of a tie in the election of any constable, it shall be determined by the judges of said election.

SEC. 3. Any candidate for the office of constable, wishing to contest the election of any person who may have been duly proclaimed elected, shall give notice thereof to the person whose election he is about to contest, within ten days after the polls have been compared, in which he shall set forth the points on which he intends to contest such election, and the name of some justice of the peace of the township, before whom he will take depositions to substantiate the points relied on by him, and the time and place of taking such depositions.

SEC. 4. The time of taking such depositions shall not exceed thirty days from the day of the election.

SEC. 5. The justice of the peace before whom such depositions may be taken, shall have power to issue subpœnas to all persons whose testimony may be required by either party, and he shall have power to compel the attendance of such witnesses by attachment.

SEC. 6. Such justice shall, at the time and place appointed, proceed and take the depositions of such witnesses as shall appear before him, and shall certify and transmit the same to the county court.

SEC. 7. No testimony shall be received by such justice, on the part of the person contesting such election, which does not relate to the points specified in the notice, a copy of which, attested by the person by whom it was served, shall be delivered to the justice, and shall be by him enclosed with the deposition.

SEC. 8. The notice required by this act to be served on the person whose election is about to be contested, may be served in the same manner as a summons, and may be served by any white person over the age of twentyone years, whose return, if he be not an officer, must be made under oath.

SEC. 9. The county court shall, at the next term after the taking of such depositions, proceed to open and examine the same, and may hear the parties and their attorneys, and if the court shall be of opinion that the party contesting is duly elected, an order shall be made directing the clerk to issue a certificate of election to the person contesting, and such person shall to all intents and purposes be deemed the constable of the township in which he was a candidate.

SEC. 10. Every constable shall, within ten days after his election, appointment, or decision on any contested election, enter into bond to the State of Arkansas, with good and sufficient securities, in any sum not less than five hundred nor more than five thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable according to law.

SEC. 11. Such bond shall be approved by the county court, or by the clerk thereof in vacation, subject to the confirmation or rejection of the court.

SEC. 12. If any constable shall fail to enter into such bond, within the time prescribed in this act, the office shall be deemed vacant, and shall be filled as in other cases of vacancy.

SEC. 13. The bond of each constable shall be filed and recorded in the office of the recorder of the county, and may be sued on at the instance of any person injured by its breach.

SEC. 14. A certified copy of such bond shall be evidence in all suits brought thereon; but no suit shall be brought on any such bond after the expiration of four years from its date.

SEC. 15. Each constable shall be a conservator of the peace throughout his county, and it shall be his duty to suppress all riots, routs, affrays, fightings, and unlawful assemblies, and he shall keep the peace, and shall cause all offenders to be arrested, and taken before

some justice of the peace to be dealt with according to law, and shall well and truly present to the proper officer all affrays and other offences against the laws of the State which shall come within his knowledge.

SEC. 16. Each constable may appoint one or more deputies, to be approved by the county court, for whose acts he shall be responsible.

SEC. 17. If any constable shall fail to pay to the proper person, any money collected by him by virtue of his office, within five days after the same may be demanded, he shall forfeit to such person double the amount collected; and if he fail to return any execution within the time prescribed, he shall forfeit and pay to the plaintiff in the execution double the amount of the same, which may be recovered by motion before the justice of the peace who issued said execution, and said justice shall issue separate executions on the said recovery, including in one the original debt, damages and costs; and in the other the penalty incurred by this act, giving such constable five days' notice of the time and place of making such motion.

SEC. 18. Such notice may be served by any person over the age of twentyone years, who would be a competent witness in the cause.

SEC. 19. If any constable shall fail to pay over any money collected by him, after demand being made, or shall fail to return any execution, or other process, within the time specified in such process, or shall fail or neglect to perform any other duty required by law, he shall be removed from office by the county court, on motion on charges exhibited against him.

SEC. 20. A copy of such charges, together with notice of the time of hearing the same, shall be served on such constable at least five days before the commencement of the term of the court, at which such motion shall be made, which may be served in the same manner as a summons, and by any person over the age of twentyone years, who would be a competent witness.

SEC. 21. If any constable shall receive from any person any bonds, bills, notes or accounts, for collection, and shall give his receipt therefor in his official capacity, and shall fail to pay to such person on demand, the amount he may have collected, and return such bonds, bills, notes or accounts, if the same have not been collected, such constable and his securities shall be responsible on his official bond for the amount of such bonds, bills, notes or accounts, not paid over or returned.

SEC. 22. No constable shall be responsible for any bond, bill or note, for which he may have given his receipts, and on which suit may have been brought.

SEC. 23. If any township be divided, the constable in office at the time of the division, shall continue in office, and be constable of the township in which he resides, and the county court shall appoint a constable for the other township, who shall hold his office until the next general election, and until his successor is elected and qualified.

SEC. 24. All vacancies which may happen in the office of constable shall be filled by the county court in term time, or by the presiding judge thereof in vacation, and the person appointed shall be a resident of the township in which the vacancy happened, and shall hold his office until his successor is elected and qualified.

SEC. 25. It shall be the duty of each constable in this State, to make return under oath of all the retailers of spirituous liquors in his township, who sell by a less measure than one quart, to each term of the circuit court of his county, and if any constable shall fail to make any such return, he shall forfeit any sum not less than five dollars for the use of the country.

SEC. 26. Each constable may execute civil process, throughout the county, but in no case shall he be allowed mileage for the service of any process he may serve out of his township, other than from the residence of the defendant in such process, to the nearest justice of peace in the township in which such defendant resides.

[Approved: February 20, 1838.]

CHAPTER 30.

CONTRACTS, PROMISES AND AGREEMENTS.

SECTION
1. What, not valid without memorandum or note in writing.
2. For sale of goods, how made valid.
3. Instruments having the clause "in cujus rei," &c. and a scrawl affixed, to be considered sealed instruments.

SEC. 1. No action shall be brought; first, to charge any executor or administrator, upon any special promise, to answer for any debt or

damage of his own estate; second, to charge any person, upon any special promise, to answer for the debt, default, or miscarriage, of another; third, to charge any person upon an agreement made in consideration of marriage; fourth, to charge any person upon any contract for the sale of lands, tenements, or hereditaments, or any interest in or concerning them; fifth, to charge any person upon any lease of lands, tenements, or hereditaments, for a longer term than one year; sixth, to charge any person upon any contract, promise, or agreement, that is not to be performed within one year from the making thereof; unless the agreement, promise, or contract, upon which such action shall be brought, or some memorandum or note thereof shall be made in writing, and signed by the party to be charged therewith, or signed by some other person by him thereunto properly authorized.

SEC. 2. No contract for the sale of goods, wares, and merchandise, for the price of thirty dollars, or upwards, shall be binding on the parties, unless—first, there be some note or memorandum, signed by the party to be charged; or, second, the purchaser shall accept a part of the goods so sold, and actually receive the same; or, third, shall give something in earnest to bind the bargain, or in part payment thereof.

SEC. 3. Every instrument of writing, expressed on the face thereof to be sealed, and to which the person executing the same, shall affix a scrawl, by way of seal, shall be deemed and adjudged to be sealed.

[Approved: March 2, 1838.]

CHAPTER 31.

CONVEYANCES OF REAL ESTATE.

SECTION
1. Real estate aliened and possession transferred by deed, without livery of seizin. Words "grant, bargain and sell" to be covenants of seizin and warranty and assurance.
2. Breaches assigned thereon as if such covenants were expressly made.
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5. Persons seized by common law in fee tail to hold a life estate, and remainder to vest in fee simple absolute.
6. Adverse possession not to hinder sale of interest in land, &c.

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8. This act not to embrace last wills and testaments.
9. Interest in real estate, granted or devised to two or more, when to be in tenancy in common — and when in joint tenancy.
10. *Feme covert* may convey real estate, and how.
11. May relinquish dower, and how.
12. Conveyances of real estate, how witnessed.
13. How proven or acknowledged.
14. Taken in the United States or territories, how attested.
15. Out of the United States, how attested.
16. Certificate of officer taking conveyance of real estate of *feme covert*, or relinquishment of dower.
17. Grantor or witness unknown to court or officer taking acknowledgment or proof, his identity must be proven, and how, and proof endorsed on conveyance, &c.
18. Acknowledgment, how to be made.
19. Proof of execution, how to be made.
20. Grantor not acknowledged execution, and subscribing witnesses dead, &c. execution how proved.
21. Conveyance by *feme covert*, or relinquishment of dower, how authenticated.
22. Pre-requisites to admission to record.
23. Letter of attorney to accompany deed, and be in like manner authenticated.
24. Letters of attorney, where proven and acknowledged.
25. When so proven and acknowledged, how revoked.
26. Conveyances, &c. how to be recorded, and thereby made evidence.
27. If lost, and not in power or control of party wishing to use the same, record or transcript of record to be evidence.
28. But not to be conclusive evidence.

SEC. 1. All lands, tenements and hereditaments, may be aliened and possession thereof transferred by deed without livery of seizin, and the words "*grant, bargain and sell*" shall be an express covenant to the grantee, his heirs and assigns that the grantor is seized of an indefeasible estate in fee simple free from incumbrance done or suffered from the grantor, except rents or services that may be expressly reserved by such deed, as also for the quiet enjoyment thereof against the grantor, his heirs and assigns, and from the claim or demand of all other persons whatsoever, unless limited by express words in such deed.

SEC. 2. The grantee, his heirs or assigns, may, in any action, assign breaches as if such covenants were expressly inserted.

SEC. 3. The term or word "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, but all deeds shall be construed to convey a complete estate of inheritance in fee simple, unless expressly limited by appropriate words in such deed.

SEC. 4. If any person shall convey any real estate by deed purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time of such conveyance have the legal estate in such lands, but shall afterwards acquire the same, the legal or equitable

estate afterwards acquired, shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance.

SEC. 5. In cases when by common law any person may hereafter become seized in fee tail of any lands or tenements, by virtue of any devise, gift, grant or other conveyance, such person, instead of being or becoming seized thereof in fee tail, shall be adjudged to be and become seized thereof for his natural life only, and the remainder shall pass in fee simple absolute to the person to whom the estate tail would first pass according to the course of the common law by virtue of such devise, gift, grant or conveyance.

SEC. 6. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest in the same manner and with like effect as if he was in the actual possession thereof.

SEC. 7. The term "*real estate*" as used in this act, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real.

SEC. 8. This act shall not be construed so as to embrace last wills and testaments.

SEC. 9. Every interest in real estate, granted or devised to two or more persons (other than executors and trustees as such) shall be in tenancy in common, unless expressly declared in such grant or devise to be a joint tenancy.

SEC. 10. A married woman may convey her real estate or any part thereof by deed of conveyance, executed by herself and her husband, and acknowledged and certified in the manner hereinafter prescribed.

SEC. 11. A married woman may relinquish her *dower* in any of the real estate of her husband, by joining with him in a deed of conveyance thereof, and acknowledging the same in the manner hereinafter prescribed.

SEC. 12. Deeds and instruments of writing for the conveyance of real estate, shall be executed in the presence of two disinterested witnesses, or in default thereof shall be acknowledged by the grantor in the presence of two such witnesses, who shall then subscribe such deed or instrument in writing for the conveyance of such real estate; and when the witnesses do not subscribe the deed or instrument of writing aforesaid at the time of the execution thereof, the date of their subscribing the same shall be stated with their signatures.

SEC. 13. The proof or acknowledgment of every deed or instrument of writing for the conveyance of any real estate, shall be taken by some one of the following courts or officers: First, when acknowledged or proven within this State, before the supreme court, the circuit court, or either of the judges thereof, or the clerk of either of said courts, or before the county court, or the presiding judge thereof, or before any justice of the peace, or notary public. Second, when acknowledged or proven without this State and within the United States or their territories, before any court of the United States, or of any state or territory having a seal, or the clerk of any such court, or before the mayor of any city or town, or the chief officer of any city or town having a seal of office. Third, when acknowledged or proven without the United States, before any court of any state, kingdom, or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any officer of any foreign country who by the laws of such country is authorized to take probate of the conveyance of real estate of his own country if such officer has by law an official seal.

SEC. 14. In cases of acknowledgment or proof of deeds or conveyances of real estate taken within the United States or Territories thereof, when taken before any court or officer having a seal of office, such deed or conveyance shall be attested under such seal of office; and if such officer have no seal of office, then under the official signature of such officer.

SEC. 15. In all cases of deeds and conveyances proven or acknowledged without the United States or their Territories, such acknowledgment or proof must be attested under the official seal of the court, or officer before whom such probate is had.

SEC. 16. Every court or officer that shall take the proof or acknowledgment of any deed or conveyance of real estate, or the relinquishment of dower of any married woman in any conveyance of the real estate of her husband, shall grant a certificate thereof and cause such certificate to be endorsed on said deed, instrument, conveyance, or relinquishment of dower, which certificate shall be signed by the clerk of the court where probate is taken in court, or by the officer before whom the same is taken and sealed, if he have a seal of office.

SEC. 17. When any grantor in any deed or instrument that conveys real estate, or whereby any real estate may be affected in law or equity, or any witness to any like instrument, shall present himself before any

court or other officer for the purpose of acknowledging or proving the execution of any such deed or instrument as aforesaid, if such grantor or witness shall be personally unknown to such court or officer, his identity and his being the person he purports to be on the face of such instrument of writing, shall be proven to such court or officer, which proof may be made by witnesses known to the court or officer, or the affidavit of such grantor or witness if such court or officer shall be satisfied therewith; which proof or affidavit, shall also be endorsed on such deed or instrument of writing.

SEC. 18. The acknowledgment of deeds and instruments of writing for the conveyance of real estate, or whereby such real estate is to be affected in law or equity, shall be by the grantor appearing in person before such court or officer having the authority by law to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein mentioned and set forth.

SEC. 19. When any such deed or instrument is to be proven, it shall be done by one or more of the subscribing witnesses personally appearing before the proper court or officer and stating on oath that he or they saw the grantor subscribe such deed or instrument of writing, or that the grantor acknowledged in his or their presence, that he had subscribed and executed such deed or instrument for the purposes and consideration therein mentioned, and that he or they had subscribed the same as witnesses at the request of the grantor.

SEC. 20. If any grantor has not acknowledged the execution of any such deed or instrument and the subscribing witnesses be dead or cannot be had, it may be proved by the evidence of the hand writing of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the deposition of two or more disinterested persons, swearing to each signature.

SEC. 21. The conveyance of any real estate by any married woman, or the relinquishment of dower in any of her husband's real estate, shall be authenticated and the title passed, by such married woman voluntarily appearing before the proper court or officer and in the absence of her husband declaring that she had of her own free will executed the deed or instrument in question, or that she had signed and sealed the relinquishment of dower for the purposes therein contained and set forth without compulsion or undue influence of her husband.

SEC. 22. All deeds and other instruments in writing for the conveyance of any real estate, or by which any real estate may be affected

in law or equity, shall be proven or duly acknowledged in conformity with the provisions of this act, before they or any of them shall be admitted to record.

SEC. 23. Every letter of attorney, containing a power to convey any real estate as agent or attorney for the owner thereof, or execute as agent or attorney for another any deed or instrument in writing, that shall convey any real estate, or whereby any real estate shall be affected in law or equity, shall be acknowledged or proven and certified and recorded with any deed that such agent or attorney shall make in virtue of such letter of attorney.

SEC. 24. Letters of attorney shall be proven or acknowledged before the same courts or officers that are authorized by this act to take probate of deeds conveying real estate.

SEC. 25. No letter of attorney duly acknowledged or proved and certified as prescribed by this act, shall be revoked but by the maker of such letter of attorney or his legal representatives, which revocation shall be in writing acknowledged or proved before the proper court or officer, and filed for record in the county or counties where such letter of attorney was intended to operate: all such letters of attorney shall be revoked and deemed void, from the time of filing such revocations for record.

SEC. 26. Every deed or instrument in writing, conveying or affecting real estate, which shall be acknowledged or proved and certified as prescribed by this act, may together with the certificate of acknowledgment, proof or relinquishment of dower, be recorded by the recorder of the county where such land to be conveyed or affected thereby shall be situate, and when so recorded may be read as evidence in any court in this State without further proof of execution.

SEC. 27. If it shall appear at any time that any deed or instrument, duly acknowledged or proved and recorded as prescribed by this act, is lost or not within the power and control of the party wishing to use the same, the record thereof, or a transcript of such record certified by the recorder, may be read in evidence without further proof of execution.

SEC. 28. Neither the certificate of acknowledgment nor probate of any such deed or instrument, nor the record or transcript thereof, shall be conclusive, but may be rebutted.

[Approved: November 30, 1837]

CHAPTER 32.

CORONERS.

SECTION
1. Election of, and term of service.
2. Bond.
3. On failure to give bond, office vacant.
4. To be conservators of the peace.
5. To quell riots, &c. and apprehend offenders.
6. Recognizances taken by, how returned.
7. In what cases to serve process.
8. On affidavit, and for what causes, process directed to coroner.
9. Of what deaths information to be given to.
10. To summon jury of inquest.
11. Oath of jury.
12. Jury to view and inquire.
13. Suspected persons and witnesses to come before jury.
14. Suspected persons examined, and how.
15. Evidence to be reduced to writing.
16. Examinations and testimony, how certified, and when used as evidence.
17. How many jurors must agree.
18. Form of inquisition.
19. Power of coroner over witnesses.
20. Coroner to arrest person charged with murder or manslaughter.

SECTION
21. On finding of killing by any person, such person when not bailable.
22. Accused how apprehended.
23. Form of warrant therefor.
24. Proceedings when accused demands to be bailed.
25. Power of coroner to commit.
26. Form of warrant of commitment.
27. Power of coroner to bail, and form of recognizance.
28. Recognizance how signed and attested.
29. Witnesses may be recognized.
30. Form of such recognizance.
31. Effect of such recognizance as evidence.
32. Witnesses may be compelled to give security, and on failure, committed.
33. Coroner to file inquisition, &c., and disposition thereof.
34. Juror summoned and failing to appear, may be attached, and penalty.
35. When body may be disinterred.
36. Penalty for burying body before inquisition.
37. When inquisition taken by justice.

SEC. 1. The qualified voters of each county in this State shall, at the time of electing members of the General Assembly, elect a coroner, who shall hold his office for the term of two years, and until his successor is elected and qualified.

SEC. 2. Every coroner shall, within twenty days after he receives his commission, enter into bond to the State of Arkansas, in a sum not less than five thousand dollars, with good and sufficient security, to be approved by the county court in term time, or presiding judge thereof in vacation, conditioned for the faithful discharge of his duties, which bond shall be filed, and recorded in the recorder's office.

SEC. 3. If any coroner shall fail to give such bond within the time prescribed in the preceding section, the office shall be deemed vacant,

and the clerk of the county court shall immediately notify the governor thereof.

SEC. 4. Every coroner shall be a conservator of the peace, and shall cause all offenders against the law, in his view, to enter into recognizance with security to keep the peace, and to appear at the next term of the circuit court of the county.

SEC. 5. Every coroner shall quell and suppress all riots, affrays, and assaults and batteries, and he shall apprehend and commit to jail all felons and traitors.

SEC. 6. Every recognizance taken by a coroner shall be returned to the clerk of the circuit court of his county, on or before the first day of the next term after taking the same.

SEC. 7. It shall be the duty of each coroner to execute and return all process, of whatever nature the same may be, where the sheriff is a party, and in all cases where just exceptions can be taken to the sheriff or his deputy, or where there is no sheriff.

SEC. 8. In all cases, upon affidavit filed with the clerk of the circuit court, or any other court of record of this State, of the partiality, prejudice or consanguinity of the sheriff or deputy sheriff of any county where suit is brought or to be brought, or shall have been commenced, the clerk shall issue and direct the original or other process in the suit to the coroner, who shall execute the same, and attend to the suit throughout in the same manner as the sheriff should do in like cases.

SEC. 9. If any person die in prison, or if any person be slain, or die an unnatural death, except by the sentence of the law; or if the dead body of any person be found, and the circumstances of the death be unknown, information shall be immediately given to the coroner of the county.

SEC. 10. It shall be the duty of the coroner, on the receipt of any such information, to summon, without delay, not less than twelve nor more than twentythree persons of his county qualified to serve as jurors, to appear at the place where the body lies, and if twelve do not appear, he shall summon others, until that number do appear.

SEC. 11. When the requisite number of jurors appear, such coroner shall administer the following oath: "You do solemnly swear that you will diligently inquire into the time, cause, manner and circumstances of the death of the person whose body lies before you, and that you will thereupon make presentment of the truth, the whole truth, and nothing but the truth, that shall come to your knowledge; so help you God."

SEC. 12. After the coroner and jurors shall have viewed the body, they shall proceed to inquire into the cause, manner and circumstances of the death.

SEC. 13. The coroner shall cause to come before the jurors all suspected persons who can be taken, and all proper witnesses, and all proper means shall be used to ascertain the truth.

SEC. 14. All suspected persons may be examined, and their voluntary declarations taken, without threats or promises, and reduced to writing, and read to the respective persons examined, and be signed by them if willing.

SEC. 15. The testimony of each witness, if material, shall be reduced to writing, and read to and signed by the witness.

SEC. 16. Such examinations and testimony shall be certified and signed by the coroner, and in case of the death of a witness, his deposition shall be evidence on the trial of any person present at his examination.

SEC. 17. At least twelve of the jurors shall agree to the inquisition.

SEC. 18. Such inquisition may be according to the following form: "State of Arkansas, county of ——. An inquisition, taken the —— day of ——, A. D. 18—, at ——, in said county of ——, before ——, coroner of said county, upon the view of the dead body of (here insert the name of the deceased, if known, or if unknown a description of the person, by his apparent age, size, clothes, &c. &c.) by the oaths of (here insert the jurors' names,) good and lawful jurors of said county, who being in due form sworn say, that the said —— came to his death (here insert the time, cause, manner and circumstances of the death as found.) In testimony whereof, as well the said coroner, as the said jurors, have hereunto set their hands, the day and year first aforesaid."

SEC. 19. The coroner shall have power to summon witnesses, and in case of their neglect to appear pursuant to the summons, to arrest them and compel their attendance. He may also issue subpœnas for, and attachments for contempt against, witnesses, directed to the constable of any township in the county.

SEC. 20. It shall be the duty of the coroner, on probable cause supported by oath that a person has committed murder or manslaughter, to arrest such person and safely keep him for examination.

SEC. 21. If it be found by any inquisition that the death of the deceased was caused by the act, abetment, procurement or command,

or counsel of any person, such person shall not be bailable by the coroner, nor by a justice of the peace, unless it appear by the inquisition that it was a case of excusable homicide, or of manslaughter.

SEC. 22. It shall be the duty of the coroner to apprehend every such person, if not under arrest, unless it appears by the inquisition to be a case of excusable homicide, and if necessary he shall issue his warrant under his hand, directed to any constable of the county, grounded on such inquisition, for the apprehension of any person accused therein.

SEC. 23. Such warrant may be in the following form: "State of Arkansas, county of ——. The State of Arkansas to the constable of any township in said county of ——. It having been found by an inquisition taken the —— day of ——, A. D. 18—, before ——, coroner of the county aforesaid, upon view of the body of ——, that the said —— came to his death (here set forth the time, cause, manner and circumstances, as in the inquisition.) You are therefore commanded to take the before named —— wheresoever he may be found, and bring —— before the said coroner, to be dealt with according to law. Witness, the hand of said coroner, the —— day of ——, 18—. ——, coroner."

SEC. 24. A person arrested under such warrant, desiring to give bail, shall, upon his request, be taken before some person authorized to take bail, in the county in which he was arrested, to be bailed, if the case be bailable.

SEC. 25. The coroner shall have power to commit any person for trial, who may have been arrested by him, or who may be brought before him, by virtue of any warrant issued by him.

SEC. 26. Such commitment shall be by warrant under his hand, and may be according to the following form: "State of Arkansas, county of ——. The State of Arkansas to the sheriff of said county: It having been found by (proceed as in the foregoing warrant to the words,— "You are therefore commanded,"—and then proceed) we herewith send to you the beforenamed —— and command you to receive him, and safely keep him for trial, or until he shall be discharged according to law: Witness the hand of the said coroner, the —— day of —— 18—."

SEC. 27. The coroner shall have authority to take recognizance of bail, and he shall admit to bail any person who may be brought before him, or who may be in his custody, who is charged with a bailable offence and offers sufficient bail; and recognizance of bail may be taken

in the following form: "Be it known that on the —— day of —— A. D. one thousand eight hundred and —— before —— coroner of the county aforesaid, came —— of —— in their proper persons, and acknowledged themselves to be jointly and severally bound to the State of Arkansas in the sum of —— dollars to be paid to the State; and agreed that the said sum be levied of their goods and chattels, lands and tenements, respectively, for the use of the State, upon condition that if the said —— shall appear before the next circuit court which shall be held in and for the county of —— in the State aforesaid, to answer to all things that shall be objected against him, and shall not depart the said court without leave, then the above recognizance shall be void."

SEC. 28. Such recognizance shall be signed by the recognizors, and be attested by the coroner.

SEC. 29. The coroner shall require each witness, who may have been examined before any inquest, whose testimony he may deem material, to enter into recognizance to the State, to appear at the proper court, and give evidence.

SEC. 30. An entry in the following form, shall be a sufficient recognizance. "I am bound in recognizance to the State of Arkansas in the sum of —— dollars, to appear at the next term of the circuit court, in and for the county of —— to give evidence on behalf of the State, against —— dated the —— day of ——;" which shall be signed by the witness, and attested by the coroner.

SEC. 31. Such recognizance shall be conclusive evidence to support a scire facias, or an action of debt, and any number of witnesses may sign the same, and it shall be conclusive evidence against each, as a separate recognizance.

SEC. 32. The coroner may require a witness to find security in his recognizance, and on his failure may commit him.

SEC. 33. The coroner shall deliver every inquisition, with all the examinations, depositions and recognizances concerning the case to the clerk of the circuit court of his county, on or before the first day of the term of the court, after taking the same, who shall immediately lay the same before the attorney for the State, prosecuting in and for such county.

SEC. 34. If any person summoned by any coroner to appear for the purpose of being empanelled in any inquest as aforesaid, shall fail to appear, or refuse to serve, such coroner shall have power to issue an attachment for contempt against him, directed to any constable of the county, and the coroner may order such person to pay the costs of the

attachment, and a fine not exceeding ten dollars, and may enforce obedience to such order by imprisonment.

SEC. 35. If a body on which an inquisition ought to have been held, be interred without an inquisition, the coroner may cause the body to be disinterred, to hold an inquisition thereon.

SEC. 36. If any person shall cause a body, on which an inquisition ought to be held, to be buried without an inquisition, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten, nor more than one hundred dollars.

SEC. 37. In case of the absence of the coroner, or if he reside more than twenty miles from the place where any person may be found dead, as described in this act, the inquisition may be taken by the nearest justice of the peace, who shall have full power and authority to do and perform all such things, as is required by a coroner.

[Approved: February, 26, 1838.]

CHAPTER 33.

CORPORATIONS.

SECTION
1. Summons against, how to issue.
2. Service of, how made.
3. Return, and proceedings thereafter.
4. Notices, orders and rules, how served on.
5. Process not being served, order to be made for defendants to appear.
6. Publication of such order, and effect of.
7. First process against on judgment, to be *fi. fa.*, and how levied.
8. In what case attachment thereafter to issue.
9. Attachment, how served.
10. Effect of such service to bind debts, &c.
11. Proceedings and judgment against garnishee.
12. Garnishee paying money, to have credit against corporation.
13. Other writs of attachment to issue, when judgment not satisfied.
14. Surplus to be paid to corporation.
15. This act not to apply to public corporations.

SEC. 1. In all actions that may be instituted, in law or equity, against any private corporation, or incorporated company, it shall be sufficient to issue a summons, commanding the corporation, by the corporate name, to appear and answer the action or bill, which summons shall be returnable in like manner, and subject to the same rules and regulations as the like process in case of individuals.

SEC. 2. When any such summons shall be issued against any banking company, or other incorporated company, service on the president, or other chief officer, or, in his absence, on the cashier or chief clerk, treasurer or secretary, or, in the absence of these officers, then on any director or manager of such company, such president, or other officer, being, at the time of service, within the county in which he usually resides, or the banking-house or office of such corporation is situate, shall be deemed a sufficient service of such summons.

SEC. 3. On the return of such summons, served as aforesaid, the officer serving the same shall express in his return, distinctly, on whom and where the same hath been executed, and if on any other than the chief officer, he shall express the absence of such officer, or that he could not be found; whereupon the same proceedings, to final judgment or decree, shall be had against such corporation as in other cases.

SEC. 4. All notices, orders, and rules, required to be served in the progress of any suit against a corporation, shall be served in the same manner as a summons.

SEC. 5. In case the sheriff or other officer shall return any summons as aforesaid, not served, and it shall be made appear to the court that process cannot be served, the court shall make an order directing the defendants to cause their appearance to be entered to such action, on or before the first day of the next term of such court.

SEC. 6. A copy of such order shall be inserted in some newspaper printed in this State, for at least six weeks, and the publication of such order, in manner aforesaid, being duly proved, shall have the like effect, and the cause be proceeded in, as in cases of summons duly served.

SEC. 7. The first process upon a judgment against any private corporation, shall be a fieri facias, which the sheriff or other officer shall levy on the moneys, goods, and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases.

SEC. 8. If the sheriff or other officer shall return upon any such writ of fieri facias, that no goods and chattels, lands and tenements can be found, whereon to levy, or if the property taken shall not be sufficient to satisfy the judgment, interest, and costs, the circuit court shall, on the application of the plaintiff, or his attorney, issue a writ of attachment against the rights and credits of such corporation, reciting the judgment, execution, and return, and directed to the sheriff of the proper county.

SEC. 9. Such attachment shall be executed by summoning, as garnishee, any person having any moneys or effects belonging to such corporation, and any debtor to such corporation, who may be found within the county, to appear before the circuit court, at the return of such writ, and then and there answer touching any moneys or effects of such corporation in his hands, or any debt he may owe to the same.

SEC. 10. From the time of making such service, all moneys and effects due and owing, payable or belonging to such corporation, shall be bound until the judgment is satisfied; and no payment made thereafter to such corporation, or other disposition of any debts, moneys or effects, so attached, shall be credited to the garnishee making the same, nor shall the stock owned by such person in such corporation, be allowed as a set-off.

SEC. 11. Proceedings against garnishees under the provisions of this act, shall be the same as against the garnishees summoned in the case of absent and absconding debtors; but no judgment shall be rendered against him for any debt to become due at a future day, until after the same shall become due.

SEC. 12. For all moneys paid by any garnishee under the provisions of this act, he shall have credit against the corporation to whom it is due.

SEC. 13. If a sufficient sum be not made to satisfy such judgment and costs, other writs of attachment may be issued as aforesaid, from time to time, until the whole is satisfied.

SEC. 14. If any money remains in the hands of the officer, after satisfying the judgment and all costs, he shall pay the same to the corporation, or its order.

SEC. 15. Nothing in the provisions of this act shall be so construed as to authorize the sale of any property real or personal, belonging to the State, or any county, city, town, borough, or other public or municipal corporation, regularly incorporated according to law, by virtue of any execution.

[Approved: March 3, 1838.]

CHAPTER 34.

COSTS.

SECTION
1. Obligation for, to be filed when plaintiff non-resident, before suit commenced.
2. On failure so to do, suit dismissed.
3. When, after suit commenced.
4. Dismissed on failure to give security after rule.
5. To apply to suits before justices of the peace, and appeals from them.
6. Paupers may petition to sue as such.
7. Such petition, form of, how verified and authenticated.
8. Such petition granted, and counsel assigned.
9. Privilege of person suing as pauper.
10. What suits not to be so prosecuted.
11. When such order may be annulled.
12. Adjudication for, when judgment for plaintiff.
13. Adjudication on nonsuit, discontinuance, or verdict for defendant.
14. Adjudication on replevin.
15. on demurrer.
16. on demurrer, or judgment on issue, to one of several pleas.
17. Adjudication on defective count in declaration.
SECTION
18. When one defendant acquitted in action *ex delicto*.
19. In suits on scire facias.
20. Judgment for, where any damages are recovered.
21. On appeals to circuit courts, where judgment below was for appellee.
22. Where for appellant.
23. Where appeal is not prosecuted.
24. On appeals or writs of error to supreme court.
25. In suits in chancery.
26. In suits on bonds or contracts, to or with State, governor, &c.
27. In suits brought by one person to the use of another, the person to whose use it is brought, liable for costs.
28. Bills of costs, how taxed, &c.
29. In suits brought after tender made.
30. Re-taxation of costs, and penalty o clerk for wrongful taxation.
31. Execution may issue for.
32. And so, when costs adjudged before final judgment.
33. Judgment against security or person for use, for costs, on motion and notice given.

SEC. 1. In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators or guardians, *qui tam* actions, actions on penal statutes, and in all suits in law or equity, where the plaintiff or person for whose use the action is commenced, shall not be a resident of this State, the plaintiff or person for whose use the action is about to be brought, shall, before he institutes such suit, file in the office of the clerk of the circuit court in which the action is to be commenced, the obligation of some responsible person, being a resident of this State, by which he shall acknowledge himself bound to pay all costs which may accrue in such action.

SEC. 2. If any such action shall be commenced without filing such obligation, the circuit court shall, on motion, dismiss the same, and

the attorney for the plaintiff shall be ruled to pay the costs accruing thereon.

SEC. 3. If at any time after the commencement of any suit by a resident of this State, he shall become non-resident; or in any case where the court shall be satisfied that the plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of court with respect to their legal demands, the court shall, on motion of the defendant, or any officer of the court, rule the plaintiff, on or before a day in such rule named, to give security for the payment of the costs of such suit.

SEC. 4. If such plaintiff shall fail, on or before the day in such rule named, to file the obligation of some responsible person, being a resident of this State, whereby he shall bind himself to pay all costs which have accrued, or which may accrue, in such action, the court shall, on motion, dismiss the suit.

SEC. 5. The provisions of the two preceding sections shall apply to suits before justices of the peace, and appeals from judgments of justices of the peace.

SEC. 6. Every poor person, not being of ability to sue, who shall have a cause of action against another, may petition the court in which the action is pending, or in which it is intended to be brought, for leave to prosecute his suit as a poor person, and to have counsel assigned to conduct his suit.

SEC. 7. Such petition shall state: first, the nature of the suit brought, or intended to be brought; second, that the applicant is not worth ten dollars over and above his wearing apparel necessary for himself and his family, and excepting the subject matter of the action, when not in possession thereof; and such petition shall be verified by his own affidavit, and accompanied by the certificate of some attorney at law of the court, that he has examined the case, and is of opinion that such poor person has a good cause of action.

SEC. 8. The court to which such petition shall be presented, if satisfied of the facts alleged, and that the applicant has a meritorious cause of action, may, by rule, admit him to prosecute his suit as a poor person, and may assign him counsel, who shall do his duty therein, without taking any fee or reward therefor.

SEC. 9. Every person so admitted, may prosecute his suit without paying any fees to the officers of the court, and shall not be prevented from prosecuting the same by reason of his being liable for the costs of a former suit brought by him against the same defendant.

SEC. 10. No person shall be permitted to prosecute any action of slander, libel or malicious prosecution as a poor person.

SEC. 11. If the person so prosecuting as a poor person, be guilty of any improper conduct in the prosecution of his suit, or of any wilful or unnecessary delay, the court may, in its discretion, annul the order admitting him to prosecute as a poor person; and he shall thereafter be deprived of all the privileges conferred by such order.

SEC. 12. If any person shall sue in any action, and shall recover judgment, the plaintiff shall have judgment for costs against the defendant.

SEC. 13. If any person shall sue in any action wherein the plaintiff might have costs in case of judgment in his favor, and such person shall be nonsuited, or suffer a discontinuance after the appearance of the defendant, or a verdict shall pass against him, then the defendant shall have judgment against the plaintiff for costs.

SEC. 14. If any person make avowry, justification, or cognizance in replevin, if the same be found for him, or the plaintiff be nonsuited, or suffer a discontinuance, then such person shall recover his damages and costs against the plaintiff, in like manner as the plaintiff would have done, if the same had been found against the defendant.

SEC. 15. If, in any action, judgment upon demurrer by either party to the action, shall be against the plaintiff, the defendant shall recover costs against the plaintiff; and if judgment upon demurrer be given for the plaintiff, he shall recover costs against the defendant.

SEC. 16. When any defendant in any action, or plaintiff in replevin, shall plead several matters, any whereof shall, upon demurrer joined, be adjudged insufficient, or a judgment on any issue joined thereon shall be found for the plaintiff, costs shall be given at the discretion of the court.

SEC. 17. When there are several counts in a declaration, and any one of them shall be adjudged insufficient, or a verdict on any issue joined thereon shall be found for the defendant, costs shall be awarded at the discretion of the court.

SEC. 18. When several persons are made defendants to any action of trespass, assault and battery, false imprisonment, detinue, replevin, trover or ejectment, and one or more of them shall be acquitted, every person so acquitted shall recover his costs in like manner as if such verdict of acquittal had been in favor of all the defendants, unless it shall be certified by the court that there was reasonable cause for making such person a defendant to such action.

SEC. 19. In all suits upon writs of scire facias, the plaintiff obtaining judgment shall recover his costs of suit; and if the plaintiff shall be nonsuited, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

SEC. 20. In all actions of trespass, if, upon the trial of the issue, or inquiry of damages, any damages be found for the plaintiff, he shall recover his costs; and in all other actions which may be prosecuted in any court, the subject matter of which shall be cognizable before such court, but the damages recovered shall be below the jurisdiction of the court, the plaintiff shall recover his costs.

SEC. 21. When an appeal shall be taken from a judgment of the probate court, or a justice of the peace in favor of the appellee, costs shall be adjudged in the following cases: first, if, on the trial *de novo*, the appellee shall recover as much or more than the amount of the judgment, or if judgment be affirmed, the appellant shall pay all the costs; second, if the judgment in the circuit court shall be in favor of the appellant, the appellee shall pay the costs of both courts; third, if the appellant shall, at any time before his appeal is perfected, tender and offer to pay to the appellee any portion of the judgment, which shall not be accepted in satisfaction, and the appellee shall not, in the appellate court, recover more than the amount so tendered and refused, he shall pay the costs of the appellate court; fourth, if no such tender shall have been made, and the appellee recover any sum in the appellate court, or if, after such tender and refusal, the appellee shall recover more than the amount tendered, the appellant shall pay the costs in both courts.

SEC. 22. If such appeal shall be from a judgment in favor of the appellant, costs shall be adjudged, in the following cases, as follows: first, if the judgment appealed from be affirmed, or upon a trial *de novo*, the appellant shall not recover more than the judgment below, he shall pay the costs in the appellate court; second, if in the appeal the appellant recover nothing, or the judgment be against him, or for a less sum than was recovered in the court below, he shall pay the costs in both courts; third, if the appellant recover more than the judgment below, he shall recover costs in both courts.

SEC. 23. In all cases when an appeal from the probate court or a justice of the peace shall not be prosecuted by the appellant according to law, the judgment of the court below shall be affirmed, and the costs adjudged accordingly.

SEC 24. If any person shall sue out a writ of error, or take an appeal to review the judgment of any circuit court, and the judgment of such court shall be affirmed, or the writ of error or appeal dismissed, discontinued or quashed, or the plaintiff in error, or appellant, be nonsuited, the defendant in error, or appellee, shall recover his costs ; and if the judgment be reversed, the plaintiff in error, or appellant, shall recover his costs.

SEC. 25. Upon complainant dismissing his bill in equity, or the defendant dismissing the same for the want of prosecution, the defendant shall recover against the complainant full costs ; and in all other cases in equity, not otherwise directed by law, it shall be within the discretion of the court to award costs or not.

SEC. 26. In suits upon obligations, bonds, or other specialties, or on contracts, express or implied, made to or with the State, or the governor thereof, or any other person to the use of the State, or of a county, if the plaintiff shall recover any debt or damages, costs shall be adjudged to the plaintiff as in other cases ; but if such plaintiff suffer a discontinuance, or be nonsuited, or a verdict pass against the plaintiff, the defendant shall recover his costs.

SEC. 27. When a suit shall have heretofore been commenced, or may hereafter be commenced, in the name of one person to the use of another, the person to whose use the action is brought, shall be liable for the payment of all costs which the plaintiff may be adjudged to pay, and execution may be issued therefor.

SEC. 28. The clerk shall tax and subscribe all bills of costs arising in any cause or proceedings, instituted or adjudged in the court of which he is clerk, agreeably to the fees which shall, for the time being, be allowed by law ; and shall in no case allow any item or charge, unless the service for which it was made was actually performed in the cause.

SEC. 29. In all actions where tender shall be made, and full payment offered, by discount or otherwise, in such specie as the party by contract or agreement ought to take, and the party to whom such tender shall be made doth refuse the same, and afterwards sue for the debt or goods so tendered, the plaintiff shall not recover costs in such suit ; but the defendant shall recover costs in the same manner as if judgment had been rendered in his favor, on the merits of the case.

SEC. 30. Any person aggrieved by the taxation of any bill of costs, may, upon application, have the same re-taxed by the court in which the action or proceeding was had, and in such re-taxation, all errors

shall be corrected by the court; and if the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall forfeit all his fees, and shall also pay to the party aggrieved the whole amount which he may have paid by reason of allowing such unlawful charge.

SEC. 31. In all cases where costs are given by this act, the party to whom the same are adjudged, may have execution therefor.

SEC. 32. In all cases where either party shall be adjudged to pay costs before final judgment, the party in whose favor such costs are adjudged, may have execution therefor immediately, as upon final judgment.

SEC. 33. In all cases where there is security for costs, or where the attorney is liable for costs, or where the action is brought to the use of another, in which the plaintiff shall be adjudged to pay the costs, judgment may be rendered against such security, attorney, or person for whose use the action was brought, on motion of the party entitled to such costs, notice of such motion having first been given to such security, attorney, or other person.

[Approved: March 3, 1838.]

CHAPTER 35.

COUNTIES.

SECTION

1. Each to be a body corporate and politic.
2. Suits by or against counties, how brought.
3. Duty of county courts to take measures to have prosecuted or defended such suits.
4. Deeds, &c. to counties, declared valid.
5. Commissioner to dispose of real estate of any county, how appointed, and powers of.
6. Notes, bonds, &c. to county, or commissioners, &c. declared valid.
7. Suits on same, how commenced and prosecuted.
8. County agents, how appointed.

SECTION

9. Contracts of such agents, valid to bind the county.
10. Actions against county, may be brought in circuit court of such county.
11. Actions where county is plaintiff, may be prosecuted where defendant resides or is found.
12. Summons, in actions against county, where left, and when.
13. In such actions, inhabitants of county may be jurors or witnesses.
14. How judgments against county shall be enforced.
15. No execution to issue against lands or other property of county.

SEC. 1. Each county which now exists, or which may hereafter be established, in this State, shall be a body corporate and politic.

SEC. 2. All suits brought by or against any of the counties of this State, shall be brought in the name of or against the county of (naming the county;) and by that name they may sue and be sued, plead and be impleaded, defend and be defended, in any court of record, or other place where justice shall be administered.

SEC. 3. It shall be the duty of the county court of each county in this State, to take and order suitable measures for prosecuting and defending all suits brought by or against such county.

SEC. 4. All deeds, grants and conveyances heretofore made, or which may hereafter be made, and duly acknowledged and recorded, as other deeds of conveyance, to any county or to the commissioners of any county, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes, to vest in such county, in fee simple or otherwise, all such right, title, interest and estate, as the grantor in any such deed or conveyance had, at the time of the execution thereof, in the lands conveyed, and was intended thereby to be conveyed.

SEC. 5. The county court may, by an order to be entered on the minutes of said court, appoint a commissioner to sell and dispose of any real estate of the county, and the deed of such commissioner, under his proper hand and seal, for and on behalf of such county, duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey to the purchasers all the right, title, interest and estate whatever which the county may then have in and to the premises to be conveyed.

SEC. 6. All notes, bonds, bills, contracts, covenants, agreements or writings, made or to be made, whereby any person is or shall be bound to any county, or the commissioners of any county, or to any other person or persons, in whatever form, for the payment of any debt or duty, or the performance of any matter or thing, to the use of any county, shall be valid and effectual, to all intents and purposes, to vest in said county all rights, interest and actions, which would be vested in any individual if any such contract had been made directly to him.

SEC. 7. Suits may be commenced and prosecuted on such notes, bonds, bills, contracts, covenants, agreements and writings in the name of such county as is provided in this act, or in the name of the person to whom they were made for the use of the county, as fully and effec-

tually as any person may or can sueon like notes, bonds, bills, contracts, covenants, agreements or writings made to him.

SEC. 8. The county court may appoint an agent or agents to make any contract on behalf of the county, for the erecting of any county buildings, or for any other purpose authorized by law.

SEC. 9. The contract of such agent or agents, duly executed for and on behalf of the county, shall be valid and effectual to bind such county, to all intents and purposes.

SEC. 10. All actions against any county may be commenced and prosecuted to final judgment in the circuit court of the county against which the action is brought.

SEC. 11. Any action in which any county may be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant in such action resides or may be found.

SEC. 12. When any action shall be commenced against any county, a copy of the summons shall be left with the presiding judge of the county court, either during the sitting of said court, or so as a term of said court will intervene between the day of leaving a copy of such summons, and the return day thereof.

SEC. 13. In all actions brought by or against any county, the inhabitants of the county so suing or being sued may be jurors or witnesses, if otherwise competent and qualified according to law.

SEC. 14. When judgment shall be rendered against any county, it shall be the duty of the county court to order a warrant to be drawn on the county treasury for the amount of the judgment and costs, which warrant shall be paid as other county debts.

SEC. 15. Nothing in this act contained, shall be so construed as to authorize an execution to be issued against lands or other property belonging to any county of this State.

[Approved: December 13, 1837.]

CHAPTER 36.

COUNTY BUILDINGS.

SECTION
1. Court house and jail to be erected in each county.
2. And a fire proof building for recorder and clerks.
3. County court may levy a tax therefor.
4. Majority of all the justices of the county must concur in levying such tax.
5. What previous notice shall be given.
6. Commissioner to be appointed.
7. How vacancies in such office shall be filled.
8. County court to designate place of erection.
9. If no suitable ground belongs to the county, commissioner to purchase or receive by donation, and report.

SECTION
10. County court to examine and approve.
11. Plan and estimate, how prepared and submitted.
12. Advertisements to be made, and how.
13. Undertaker to give bond.
14. Commissioner may let parts of the work to different persons.
15. Commissioner to superintend and report.
16. Undertaker, how to be paid.
17. No order for payment to be made except on certificate of commissioner.
18. Compensation of commissionerer.
19. Power of county court to alter, repair and rebuild, and to build pillories, &c., and preserve public buildings.

SEC. 1. There shall be erected in each county, at the established seat of justice thereof, a good and sufficient court house and jail.

SEC. 2. As soon as the court house and jail shall be erected, and the circumstances of the county will permit, there shall also be erected a fire proof building, at some convenient place near the court house, in which shall be kept the offices of the recorder and of the clerks of the several courts held in such county.

SEC. 3. Whenever the county court of any county shall think it expedient to erect any of the buildings aforesaid, (the building of which shall not be otherwise provided for,) and there shall be sufficient funds in the county treasury which may be appropriated to the erection of county buildings, or which are not otherwise appropriated, or if the circumstances of the county will permit the county court to levy a tax for the erection of said buildings, such court may make an order for the building thereof, stating in such order the amount to be appropriated for that purpose.

SEC. 4. Whenever the county court shall deem it expedient to levy a tax for the erection of any public building, or the repair of the same, it shall require a majority of the justices of the county therein

commissioned, to concur, in making any such order to levy such tax for erecting public buildings.

SEC. 5. When any county court shall deem it proper to levy any tax for public buildings, it shall be the duty of such county court to direct the sheriff to put up a notice thereof in each township, notifying the justices of such township, that a county tax will be levied at the next term of said court for the erection of public buildings; and if such justices do not attend, then the justices that do attend, may by a vote of the majority attending levy such tax.

SEC. 6. When any county court shall have made an order for the erection of any public buildings, they shall appoint some suitable person as commissioner of public buildings, who shall superintend the erection of such buildings.

SEC. 7. The county court shall from time to time fill any vacancy that may happen in the office of commissioner of public buildings for their respective counties.

SEC. 8. The county court shall designate the place whereon to erect any county building, on any land belonging to the county at the established seat of justice thereof.

SEC. 9. If there be no suitable ground for that purpose belonging to the county, the commissioner of public buildings shall select a proper piece of ground at the seat of justice, and may purchase or receive by donation a lot or lots of ground for that purpose, and shall take a good and sufficient deed in fee simple for the same to the county, and shall make report of his proceedings to the county court at its next term.

SEC. 10. The court shall examine the proceedings of the commissioner, and if they find the title of such property so purchased to be good, and otherwise approve his proceedings, the court shall so state their approval of the same on the record, and make an order accepting the same and directing the payment of the purchase money if any, out of the county treasury.

SEC. 11. When the ground for erecting any public building shall be designated as aforesaid, the commissioner shall prepare and submit to the county court a plan of the building to be erected, the dimensions thereof, and the materials of which it is to be composed, with an estimate of the probable cost thereof.

SEC. 12. When any plan shall be approved by the county court, the commissioner shall advertise for receiving proposals for erecting such building, and shall contract with the person who will agree to do

the work on the lowest and best terms, not exceeding the amount so appropriated by the county court.

SEC. 13. The commissioner shall take from the undertaker a bond to the county, with sufficient security, for the performance of the work, at such time and in such manner as shall be agreed on, according to the plan, (a copy of which shall be annexed,) under a penalty of at least double the amount to be given for erecting the building.

SEC. 14. Such commissioner may let parts of the work to different persons.

SEC. 15. It shall be the duty of the commissioner to superintend and direct the execution of the work, and to see that the materials employed are good and the work executed according to contract, and to make report of the progress and condition thereof from time to time to the county court.

SEC. 16. When any instalment shall become due to the undertaker according to contract, the county court shall make an order that the same be paid out of the county treasury.

SEC. 17. No such order shall be made except on the certificate of the commissioner that a due proportion of the work has been completed and executed according to the contract.

SEC. 18. The commissioner for public buildings for any county, shall receive such compensation for his services as the county court shall deem reasonable, to be paid out of the county treasury as other county claims are paid.

SEC. 19. The county court shall have power from time to time, to alter, repair or rebuild any county building which has been or may hereafter be erected in their county, and may cause a pillory and other necessary buildings and fixtures to be erected, as circumstances may require and the funds of the county may admit. And they shall moreover take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage.

[Approved: November 23, 1837.]

CHAPTER 37.

COUNTY LINES.

SECTION
1. County court empowered to direct surveyor to ascertain county lines.
2. To cause a copy of such order to be presented to county court of adjoining county, who shall make a similar order.
3. Surveyors to run lines, and report to their respective county courts, and such report, if approved, to be recorded.
4. Each surveyor to return map or plat of such line.
5. One surveyor authorized to run such line, if the other fail to attend.
6. Compensation of such surveyors, and how paid.

SEC. 1. Whenever it shall appear to the satisfaction of any county court, that the boundaries of the county are not sufficiently special and well ascertained, such court shall issue an order to the county surveyor requiring him on a day and at a place to be therein specified, to proceed and ascertain, survey and mark, such part of such line as may be designated.

SEC. 2. It shall be the duty of the county court making such order to cause a copy thereof to be presented to the county court of the adjoining county at least ten days before the time appointed for the running and marking such line; whereupon such court, on receiving the copy of such order, shall issue an order to the county surveyor of such county, requiring him to proceed at the time and place appointed, and assist in running and marking such line.

SEC. 3. Such surveyors shall proceed, at the time and place appointed, to ascertain, survey and mark the line designated in such order, and make return thereof to their respective county courts, which, if approved by such courts, shall be recorded as evidence of the line run.

SEC. 4. Each surveyor shall return to the county court of his county a map or plat of the line so run and marked.

SEC. 5. If either of such surveyors shall fail to attend at the time and place appointed, the one in attendance shall proceed alone, to survey and mark such line, and make his report to the county court, which being approved by such court shall be recorded as evidence of the line in controversy, and the line so surveyed and marked shall thereafter be regarded as the true line of the county.

SEC. 6. The accounts of such surveyors shall be paid by their respective counties, and each surveyor shall be allowed the sum of four dollars for each mile surveyed and marked, and five cents per mile for travelling from his place of residence to such line and back.

[Approved; November 30, 1837.]

CHAPTER 38.

COUNTY REVENUE.

SECTION
1. What tax to be levied for county purposes.
2. Power of county court to lay further taxes.
3. Limit of county taxation.
4. County court to fix rates of taxation, when and how.
5. Record thereof.
6. Duties of collector and treasurer.
7. Penalty for failure of collector to pay over, and how recovered.

SEC. 1. In addition to the revenue arising from ferry, tavern, and grocery licences, which is hereby appropriated for county purposes, there shall be levied and collected a county tax on the following objects: First, on each free male over the age of twentyone years and under sixty, a poll tax, not exceeding one dollar, at the discretion of the county court. Second, a tax of three dollars on each criminal conviction. Third, a tax of fifty cents on each original writ and execution issued out of any of the courts of the State, and the sum of fifty cents on the certificate of record of each instrument of writing recorded in the recorder's office.

SEC. 2. The several county courts shall have power to levy such sum as may be annually necessary to defray the expenses of the several counties, in addition to the objects of taxation in the preceding section, on all the objects of taxation for State purposes, and shall have power to levy a tax on all licenses and privileges taxed for State purposes, in any sum not exceeding the amount of State tax.

SEC. 3. The county tax levied in any one year, shall not exceed the one half of one per centum on the assessed value of the property made taxable for State purposes.

SEC. 4. Immediately after the assessment list of each county shall have been corrected and adjusted according to law, the county court

shall ascertain the sum necessary to be raised for county purposes, and fix the rates of taxes, so as to raise the requisite sum, and cause the same to be entered in proper columns on the tax-book.

SEC. 5. Whenever the county court shall ascertain the amount of revenue to be raised for county purposes, and fix the rate of county taxes, the same shall be entered of record, so as to show the whole amount to be raised, and the proportion which the rates of county taxes bear to the rates of the State tax.

SEC. 6. Every collector of the county revenue, having made settlement, according to law, of the county revenue received and collected by him, shall forthwith pay the amount found due from him, into the county treasury, and the treasurer shall give duplicate receipts for the amount received, one of which shall be filed by the collector in the office of the clerk of the county court.

SEC. 7. Every collector who shall fail to make payment of the amount due from him on settlement, in the time and manner prescribed in the preceding section, shall forfeit and pay to the county the sum of five per centum per month on the amount wrongfully withheld, to be computed from the time payment ought to have been made, until actual payment, which may be recovered by suit on his official bond.

[Approved and in force: March 5, 1838.]

CHAPTER 39.

COUNTY SEATS.

SECTION

1. In what cases to be removed — and order of county court to elect commissioners therefor.
2. Time of such election, how fixed in such order, and sheriff to give notice of election.
3. Election, how conducted, and poll-books how returned.
4. Poll-books how opened and compared, and certificate of election to be given.
5. Where there is a tie, new election, how to be ordered and held, &c.
6. Commissioners elected to take oath, and form thereof.
7. Commissioners to meet, and what previous notice to be given.
8. Failing to select site for twelve months, another election to be held.
9. Power of as to, and notice of, adjournments.
10. Vacancy among, how filled.
11. Powers of, to be the same as of commissioners of counties.
12. Powers of, as to buying land, laying off and selling lots, &c.
13. Money received by, how to be disposed of.
14. Commissioners to give bond and security, when, and how conditioned.

SECTION
15. Course to be pursued where the funds so obtained are insufficient.
16. Majority of commissioners to rule and form a quorum; and their compensation.
17. When commissioners report that they have located the county seat and erected a court house, all courts to be held there, &c.
18. Clerk's records, &c. to be moved there.
19. Commissioners heretofore elected, to be governed by same rules, and possess the same powers.
20. When seat of justice has been established four years, only on what conditions to be removed.
21. Lots, &c. in said seat of justice to be valued, and how, and tax raised to pay therefor.
22. Such lots, &c. then to belong to the county, and may be sold for her use.

SEC. 1. Whenever a majority of the taxable inhabitants of any county (as the same shall appear by the tax book made and returned last preceding the application,) shall petition the county court of such county, praying the removal of the seat of justice thereof, the court shall order an election for the purpose of electing three commissioners to locate the seat of justice of such county.

SEC. 2. The court, in such order, shall appoint the time for holding such election, not less than thirty days from the time of making such order; and it shall be the duty of the sheriff to give at least fifteen days' previous notice of the time and places of holding such election, by putting up at least three advertisements in each township of such county.

SEC. 3. Such election shall be conducted, in all respects, in the same manner as elections for members of the General Assembly are required by law to be conducted; and the poll-books thereof shall be returned, under seal, to the clerk of the county court, within five days thereafter.

SEC. 4. It shall be the duty of such clerk to take to his assistance two justices of the peace of the county, and open and compare the polls of such election; and the three persons having the highest number of votes, shall be considered duly elected commissioners for the location of the seat of justice of such county; and the clerk shall give to each person elected a certificate of his election.

SEC. 5. If any two or more persons shall have an equal number of votes and a higher number than any other who is not elected, the clerk shall immediately notify the sheriff thereof, who shall immediately by advertisement, order an election to be held within ten days, for the purpose of choosing between the persons having such equal number of votes; and the poll-books of such election shall be returned and compared in manner aforesaid.

SEC. 6. All commissioners elected under the provisions of this act, shall, before entering on the duties of their office, take an oath, before some judge or justice of the peace, that they will locate the seat of justice of the county impartially, and as little as may be to the prejudice of the majority of the inhabitants thereof, taking into consideration donations, future divisions, and the general interests of the the people of such county.

SEC. 7. On the commissioners' being so qualified, they shall meet, immediately thereafter, at the then seat of justice of such county, giving, in the mean time, fifteen days' notice of the same, and proceed to select a suitable site for the location of the seat of justice of such county.

SEC. 8. If any commissioners shall fail to make the location of their seat of justice, for the term of twelve months from the date of their election, then and in that case, their powers as commissioners shall cease; and the sheriff of such county shall advertise another election to be held under the provisions of this act, for the election of other commissioners in their stead, agreeably to the provisions of this act.

SEC. 9. All commissioners qualified under the provisions of this act, shall sit on their own adjournment, and give due notice thereof by advertisements set up at the door of the house where the courts are usually held in their respective counties.

SEC. 10. If a vacancy shall happen in the office of commissioner, in any county in this State, by death, resignation, removal, or the refusal to act of any person so elected, such vacancy shall be filled by the county court.

SEC. 11. All commissioners who may be elected or appointed under the provisions of this act, shall possess all the powers and privileges of commissioners of counties, and shall have power to open books of subscription, and to receive donations in land, money, and building materials, for the purpose of building such public buildings as may be necessary for the use of the county, at the place selected by them as the seat of justice of their respective counties.

SEC. 12. Such commissioners shall have power to make entries of land, and for the same, or such as may be donated to them, to receive title deeds, conveying to the county such lands in fee simple, without reservation or condition; and such commissioners shall have power to subdivide, and lay off into lots, all such lands as they may acquire by entry, donation, or otherwise, and to dispose of the same at

public auction, giving at least sixty days' notice of the time and place of such sale; and such commissioners shall have full power and authority to make deeds of conveyance to all purchasers of lots so sold.

SEC. 13. The money arising from the sale of such lots, shall be applied by the commissioners, under the direction of the county court, to the erection of public buildings at the place selected as the seat of justice of such county; and should a balance of funds received by subscription, donation, or the sale of lots, as aforesaid, remain in the hands of the commissioners, on the completion of the public buildings of their respective counties, the same shall be paid into the county treasury.

SEC. 14. The commissioners shall, before they proceed to collect any moneys from subscription, or the sale of lots, give bond and security to the county, in such sum as the county court shall direct, for the true application and disbursement of the funds that may come to their hands, as commissioners; and they shall settle annually with the county court for the same.

SEC. 15. If the commissioners for the location of any seat of justice in this State, shall report that they want funds for the completion of the public buildings of their county, and there shall be money in the county treasury unappropriated, the county court may order the same, or a part thereof, to be applied to the completion of such buildings; and the commissioners shall be at liberty to draw on the county treasurer for the sum so ordered, and the treasurer shall pay the same.

SEC. 16. At all meetings of commissioners for the location of seats of justice, a majority shall rule, and a majority of the board shall form a quorum to transact business; and each commissioner shall receive for his services the sum of one dollar per day for each and every day he may be employed.

SEC. 17. When the commissioners of any county shall make a location of their seat of justice, under the provisions of this act, and report to the county court of such county that they have a house ready for the reception of the court, then, and in that case, the next and every succeeding term of such court, and the circuit court, and all other courts, shall be held at the place so selected, and all process shall be returnable thereto.

SEC. 18. The clerk of the several courts of such county, shall move all books, records, and papers, in his office, at least thirty days previous to the next term of such courts, to, or within one mile of, such seat of justice.

SEC. 19. All commissioners heretofore elected or appointed for the purpose of locating the seat of justice of any county, shall be governed, in all respects, according to the provisions of this act, and shall possess the same powers as commissioners elected in accordance with the provisions thereof.

SEC. 20. When the seat of justice of any county shall have been established for the term of four years, the same shall not thereafter be removed, unless the county court shall cause a sufficient tax to be assessed on all the taxable property within the county, to pay the owners of lots at such seat of justice, for their lots and improvements.

SEC. 21. In that event, the county court shall appoint three disinterested persons, not residents of the county, to value all lots and improvements in such seat of justice, and report the valuation thereof to the county court, who shall thereupon cause the taxes so assessed to be levied and collected, and pay to each lot holder the value of his lot and improvements.

SEC. 22. All such lots, and improvements thereon, shall then be considered as belonging to the county, and shall be conveyed, by the owners of such lots, to the county; and the same may be sold for the use thereof, by order of the county court, and conveyed to the purchaser by the person authorized to make such conveyance.

[Approved and in force: February 20, 1838.]

CHAPTER 40.

COUNTY SURVEYORS.

SECTION

1. Election for, and term of service.
2. Bond of.
3. Not entering into bond, office to be vacant.
4. To survey lands sold for taxes.
5. Duties of generally, as to orders of court.
6. Any person may have lands surveyed.
7. But persons interested must first be notified.
8. To make survey of subdivision conformably to original survey.
9. Corners how perpetuated.
10. Instruments, &c. to be provided by, and survey book to be kept.
11. Record of survey to be open to inspection.
12. And to be delivered up to successor.
13. Penalty for retaining record.
14. Certified copy from such record, to be *prima facie* evidence.
15. No act or record of, to be conclusive.
16. Deputies to be appointed and sworn.

SECTION
17. Chainmen, how appointed and sworn.
18. What surveys to be legal evidence.
19. When surveyor *pro tempore* to be appointed, and powers of.
20. Calculations, how made.
21. Record book furnished by county.
22. This act to extend to surveyors heretofore appointed.

SEC. 1. The qualified electors in each county in this State shall, on the first Monday of October, in the year of our Lord one thousand eight hundred and thirtyeight, and every two years thereafter, elect one county surveyor, who shall hold his office for the term of two years, and until his successor shall be elected and qualified.

SEC. 2. Each county surveyor shall, within fifteen days after he receives his commission, enter into bond, with good and sufficient security, in a sum not less than one thousand nor more than six thousand dollars, to the State of Arkansas, conditioned for the faithful performance of the duties of his office, according to law, to be approved by the county court, or the clerk thereof in vacation, subject to the confirmation or rejection of the county court in term time.

SEC. 3. If any county surveyor shall neglect to enter into bond within the time prescribed in this act, the office shall be deemed vacant, and it shall be the duty of the clerk of the county court, immediately, to inform the governor of the failure of such surveyor to give bond as required in this act.

SEC. 4. It shall be the duty of the county surveyor to survey all lands sold for taxes in his county, on the application of any person producing to him a certificate of purchase from the officer by whom such lands may have been sold.

SEC. 5. It shall be the duty of the county surveyor to execute all orders to him directed by any court of record, for surveying or resurveying any tract of land, the title of which is in dispute or in litigation before such court, and to obey all orders of survey for the partition of real estate, and also to accompany viewers and reviewers of roads, for the purpose of running and measuring any proposed road whenever required by such viewers or reviewers.

SEC. 6. Any person who may have entered any of the public lands of the United States, and having received from the proper officer a certificate of such entry, and desiring his lands surveyed and laid off according to the certificate, may apply to the county surveyor for that purpose, who shall make such survey in accordance with the entry.

SEC. 7. Before the county surveyor shall proceed to survey any such tract of land, he shall be satisfied that all persons owning lands

adjoining, and who may be in any manner affected by such survey, have been notified to attend and be present at the surveying thereof.

SEC. 8. It shall be the duty of each county surveyor, in subdividing any section or part of a section of land, originally surveyed under the authority of the United States, to make his survey conformably to the original survey.

SEC. 9. For the purpose of perpetuating every survey, the surveyor shall establish his corners by taking bearing trees, and noting particularly their course and distance from the corner; and when there are no trees within a reasonable distance, the surveyor shall perpetuate his corners by erecting mounds of turf of at least two and a half feet at the base, and two feet high, or, in lieu of mounds, stones may be planted in the ground, to a depth not less than twelve inches, which shall not be less than eighteen inches long, eight inches wide, and three inches thick, and such stones shall be described in the field book.

SEC. 10. It shall be the duty of each county surveyor to furnish himself with a compass of approved construction, having a nonious division; also, a two-pole chain of fifty links, and a well bound book, in which he shall carefully and legibly record and note down every survey made by him, giving the name of the person the survey of whose lands is recorded, and describing, as near as practicable, the metes and bounds of the tract, and noting the date on which the survey was made.

SEC. 11. Such record shall be subject to the inspection of every person who may deem himself interested therein.

SEC. 12. It shall be the duty of the county surveyor, or other person having the official record of such surveyor in his possession, to deliver up such record to his successor, whenever he may be applied to for that purpose.

SEC. 13. If such surveyor, or the person having the possession of such record, shall refuse to deliver the same to such successor when demanded, he shall forfeit and pay the sum of one dollar per day for every day he may retain the same after demanded, to be recovered by action of debt, before any justice of the peace, in the name of any person who may sue for the same, one half to the use of the person suing, and the other half to the use of the county.

SEC. 14. A certified copy of the record of any county surveyor, under the hand of the surveyor, shall be admitted as *prima facie* evidence in any court of record in this State.

SEC. 15. No act or record by any surveyor, or his deputy, shall

be conclusive, but may be reviewed by any competent tribunal, in any case where the correctness thereof may be disputed.

SEC. 16. Each county surveyor may appoint one or more deputies, to assist him in the performance of the duties of his office, and each deputy shall be sworn to perform the duties of his office according to the best of his skill and judgment, without favor or affection.

SEC. 17. The necessary chainmen shall be employed by the person wanting surveying done, but they shall be good and disinterested persons, to be approved by the surveyor, and shall be sworn by the surveyor to measure justly and exactly, according to the best of their abilities.

SEC. 18. No survey made by any person, except the county surveyor or his deputy, shall be considered as legal evidence in any court of law or equity within this State, unless such surveys are made under the authority of the United States, or by the mutual consent of the parties.

SEC. 19. In all cases where the county surveyor may be interested in any survey which is required to be made by any court, such court shall direct such survey to be made by some competent person, and the person so appointed shall have power to administer the necessary oaths to the chainmen, and shall return such survey under oath, and shall be entitled to the same fees for his services as the county surveyor would be entitled to receive for similar services.

SEC. 20. All calculations to ascertain the content of any tract of land, by any county surveyor, or other person, shall be made by differences of latitude and departure.

SEC. 21. The record-book required by this act to be kept by each county surveyor, shall be furnished at the expense of the county.

SEC. 22. The provisions of this act shall extend as well to all county surveyors who have heretofore been, as those who may hereafter be, elected.

[Approved: February 12, 1838.]

CHAPTER 41.

COUNTY TREASURERS.

SECTION

1. How elected, and term of service.
2. Bond to be given by, form of, &c.
3. To be filed and recorded.
4. If not, office to be vacant, and governor to be informed thereof.
5. Treasurer to receive, receipt for, pay out and disburse county moneys.
6. To keep accounts thereof, &c.
7. To make duplicate receipts for all money paid in, and keep books, &c. open to inspection of county court.
8. To furnish county court with an account of receipts and expenditures, if required.
9. To settle with county court once in each year, and dying or being removed, &c. duty of self, executor or administrator.
10. Penalty for neglect to pay any warrant.
11. How recovered, and effect of.
12. Warrant not paid for want of funds, to be endorsed and bear interest.
13. Duty of, to redeem warrants, and give notice thereof.
14. To keep account of warrants redeemed and principal and interest paid.
15. Duty of clerks of county court; 1st. to keep account between treasurer and county. 2d. Between county and all other persons chargeable. 3d. To file and preserve all documents, vouchers, &c. 4th. To issue warrants, keep an abstract thereof, &c.
16. Clerks to keep account of all taxes, fines, &c. and account therefor to courts.
17. Judges of courts to audit and adjust such accounts, and duty thereon.
18. Duty of clerks to settle with sheriffs, and make out lists of sums chargeable to them.
19. Deposition to be made of such lists.
20. Justices of peace to settle for fines with

SECTION

county court, lists to be made out, &c.

21. Persons charged with money collected for county, to settle with county courts, and take receipts, &c.
22. Persons failing to settle or adjust accounts, court to adjust them.
23. Court may then refuse any commission, and balance found due to be paid.
24. Penalty for not paying within ten days thereafter.
25. Judgment and execution to be entered up for balance, penalty, &c. unless for cause shown.
26. If good cause shown, court may re-examine and settle.
27. Amount of balance found, to be a lien on real estate of debtor.
28. County court to ascertain amount due from county, and issue warrant and form of warrant.
29. Warrant to be signed and numbered.
30. Clerk to keep register of warrants, and form thereof.
31. Treasurer to keep similar register.
32. Treasurer to file register on annual settlement.
33. Warrants, how to be paid, and to be received in payments to county.
34. Disposition of warrants redeemed.
35. County court to examine on oath, and compel production of papers, books, &c. on settlements.
36. Failure to account, &c. to be held a misdemeanor in officer.
37. County court to enter judgments against county officers for moneys not paid over.
38. Compensation of county treasurers.
39. No sheriff, clerk or deputy of either, to be eligible to office of.
40. County scrip to be cancelled, and warrants issued.

SEC. 1. There shall be elected, by the qualified voters of each county in this State, a county treasurer, who shall hold his office for the term of two years, and until his successor is elected and qualified.

SEC. 2. Each county treasurer shall, within twenty days after the receipt of his commission, enter into bond, with good and sufficient security, to the State of Arkansas, in any sum not less than two thousand, nor more than ten thousand dollars, to be approved by the county court, or the presiding judge thereof in vacation, conditioned for the true and faithful performance of his duties as county treasurer, and that he will truly account for, and pay over, all moneys that may come to his hands as treasurer.

SEC. 3. Such bond shall be filed and recorded in the recorder's office of the county.

SEC. 4. If any county treasurer shall neglect or refuse to enter into bond within the time prescribed by this act, the office shall be considered vacant; and it shall be the duty of the clerk of the county court forthwith to inform the governor of such vacancy.

SEC. 5. It shall be the duty of each county treasurer to receive and receipt for all moneys payable into the county treasury, and pay and disburse the same on warrants drawn by order of the county court.

SEC. 6. He shall keep a true and just account of all moneys received and disbursed, and a regular abstract of all warrants paid by him.

SEC. 7. He shall make duplicate receipts in favor of the proper person for all moneys paid into the treasury, and keep the books, papers, and money pertaining to his office, at all times ready for the inspection of the county court, or the presiding judge thereof.

SEC. 8. He shall, at each term of the county court, if required, furnish such court with an account of the receipts and expenditures of the county not before accounted for.

SEC. 9. He shall, once in each year, settle his accounts with the county court of his county; and if he resign, be removed from office, or die, he, or his executor or administrator, shall immediately make such settlement, and deliver to his successor in office, all things pertaining thereto, together with all the moneys belonging to the county.

SEC. 10. If any county treasurer shall neglect or refuse to pay any warrant drawn on him by order of the county court of his county, having in his hands money applicable thereto, he shall forfeit and pay to the holder of such warrant, fourfold the amount thereof.

SEC. 11. Such forfeiture may be recovered by action of debt, in

the name of the party aggrieved, against such treasurer and his securities; and he shall be deemed guilty of a misdemeanor in office, and on conviction thereof shall be removed from office.

SEC. 12. When a warrant shall be presented to the treasurer for payment, and the same is not paid, for want of funds, the treasurer shall endorse said warrant "Not paid for want of funds," annexing the date of its presentment, and shall sign his name thereto; and such warrant shall, from thenceforth, bear interest at the rate of six per centum per annum.

SEC. 13. As soon as there shall be sufficient funds in the treasury of the county to redeem the warrants drawn thereon, and on which interest is accruing, the county treasurer shall give notice that he is ready to redeem such orders; and from the date of such notice, the interest on such warrants shall cease.

SEC. 14. When the county treasurer shall redeem any warrant on which interest is due, he shall note on such warrant the amount of interest by him paid thereon, and shall enter in his account the amount of such interest, distinct from the principal.

SEC. 15. It shall be the duty of the clerk of the county court of each county,

First, To keep a regular account between the treasurer and the county, charging him with all moneys paid into the treasury, and crediting him with the amount he may have disbursed, between the period of his respective settlements with the court.

Second, To keep just accounts between the county, and all persons, bodies politic or corporate, chargeable with moneys payable into the county treasury.

Third, To file and preserve in his office all documents, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of such clerk, shall be admitted to be read in evidence in any of the courts of this State.

Fourth, To issue warrants on the treasury for all moneys ordered to be paid by the court, keep an abstract thereof, present the same to the county court at every regular term, balance and exhibit the accounts kept by him as often as required by the court, and keep his books and papers at all times ready for the inspection of the county court or the presiding judge thereof.

SEC. 16. It shall be the duty of the clerks of the several courts of record of this State, to keep a just and true account of all taxes,

fines, penalties, forfeitures, and judgments, accruing to the county, which may be rendered or imposed by their respective courts, or which have accrued upon any suit, process, certificate or proceeding in their respective courts, and keep the same at all times ready for the inspection of the court, and to render accounts at each term of their respective courts, verified by oath, of all moneys which he hath or ought to have received to the use of the county not before accounted for.

SEC. 17. It shall be the duty of the judges of such courts to audit and adjust the accounts of their respective clerks, according to the records, dockets and papers of their respective courts, and to make two separate bills of the several sums wherewith their clerks shall be chargeable, specifying on what account the same is payable, and certify a copy thereof to the clerk of the county court, who shall file and charge the same accordingly, and the other shall be certified and delivered to the county treasurer.

SEC. 18. It shall be the duty of all courts of record, at each term thereof, to settle with the sheriff of each county within their jurisdiction, for all moneys by him received, or which he ought to have collected, for the use of the county, and which have not been accounted for; and they shall cause their clerk to make out two separate lists of all sums chargeable to any sheriff, and payable to any county, specifying on what account, and cause the same to be certified under the seal of the court.

SEC. 19. One of the lists so certified shall be immediately transmitted to the clerk of the county court to which such sums are payable, who shall immediately charge the same accordingly, and the other shall be transmitted to the treasurer of the same county.

SEC. 20. It shall be the duty of each justice of the peace, at each term of the county court, to make out duplicate lists of all fines by him imposed, for the use of the county, stating therein the name of the officer who hath or ought to have collected the same, one of which lists he shall certify and deliver to the clerk of the county court, who shall charge the same accordingly, and the other shall be delivered to the county treasurer.

SEC. 21. All collectors, sheriffs, clerks, constables and other persons chargeable with moneys belonging to any county, shall render their accounts to, and settle with, the county court, at each regular term thereof, and pay into the county treasury any balance which may be due the county, and take duplicate receipts therefor, and deposit

one of them in the office of the clerk of the county court within five days thereafter.

SEC. 22. If any person thus chargeable shall neglect to render true accounts, or settle, as aforesaid, the court shall adjust the accounts of such delinquent according to the best information that can be obtained, and ascertain the balance due the county.

SEC. 23. In such case the court may refuse to allow any commission to such delinquent; and he shall, moreover, without delay, pay into the county treasury the balance found due as aforesaid.

SEC. 24. If such delinquent shall not pay the amount thus found due the county, and produce the treasurer's receipt therefor within ten days after such balance is ascertained, the clerk shall charge such delinquent, as a penalty for such failure, twentyfive per centum on the amount then due.

SEC. 25. Unless such delinquent shall appear, on the first day of the next succeeding term of the county court, and show good cause for setting aside such settlement, the court shall enter up judgment for the amount due, with the penalty added thereto, and fifty per centum per annum thereon, until the same shall be paid, and may issue execution thereon.

SEC. 26. If good cause be shown for setting aside such settlement, the court may re-examine, settle, and adjust the same, according to law, and may remit any penalty that may have been imposed.

SEC. 27. The amount or balance of every account settled agreeably to the provisions of this act, and due to the county, shall be a lien, from the date of the settlement of such account, on the real estate of the debtor in the county.

SEC. 28. When any county court shall ascertain that any sum of money is due from the county to any person, body politic or corporate, an order shall be made allowing the same, and directing the clerk to issue a warrant therefor, which shall be of the following form:

"No. ——. Treasurer of the county of —— pay to —— ——, or bearer, —— dollars, out of any money in the treasury appropriated for county expenditures, (or express the particular fund out of which the warrant is to be paid.) Given at ——, this —— day of ——, 18—.

A. B. *Clerk.*

"$——."

SEC. 29. Such warrants shall be signed by the clerk of the county court, and shall be numbered progressively throughout the year, commencing on the first day of January in each year.

SEC. 30. Each clerk of the county court shall keep a register of

all warrants issued, in which he shall set forth the numbers, date, name of the person in whose favor drawn, on what account, and the amount thereof, which register may be in the following form:

No.	Date.	In whose favor drawn.	On what account.	Amount.	
				Dols.	Cts.

SEC. 31. The county treasurer shall keep a register similar to the one required by the preceding section to be kept by the clerk, to which the time when paid shall be added in a separate column.

SEC. 32. It shall be the duty of the treasurer, when he makes his annual settlement with the county court, to file a copy of his register of warrants paid.

SEC. 33. All warrants drawn on the treasury shall be paid out of any money in the treasury not otherwise appropriated, or out of the particular fund expressed therein, and shall be received in payment of all taxes, debts, fines, penalties, and forfeitures, accruing to the county.

SEC. 34. The treasurer, at his annual settlement with the county court, shall produce to the court all the warrants redeemed by him during the preceding year, and the presiding judge of such court shall write the word "redeemed" across the face of each warrant, and sign his name thereto, and cause all warrants thus redeemed to be filed in the office of the clerk of the county court.

SEC. 35. Each county court may, in the investigation of any account, examine all the parties and witnesses, on oath, touching the same, or any other matter arising under this act; and shall have power to compel the production of all books, accounts, papers, or documents, which may be necessary in the investigation of any matter arising under the provisions of this act.

SEC. 36. If any collector, sheriff, clerk, or other officer, shall wilfully neglect or refuse to render his accounts, and settle with the county court, for moneys by him received, or which he ought to have received, to the use of the county, in the manner, and at the time, prescribed by this act, or shall render a false account, he shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly.

SEC. 37. When any balance shall be found against any clerk, sheriff, collector, coroner, or other officer, for moneys accruing to the county treasury, and the same shall not be paid within the time required by this act, it shall be lawful for the county court, fifteen days' notice being given to such delinquent and his securities, upon motion of the county treasurer, to render judgment against such delinquent and his

securities, for the amount of all moneys ascertained to be due the county, and issue execution therefor.

SEC. 38. The following compensation shall be allowed to the several county treasurers in this State, for their services :—In all cases where the amount received in any one year does not exceed five hundred dollars, not exceeding eight per centum ; on all sums over five hundred dollars, and less than one thousand dollars, not exceeding four per centum ; on all sums over one thousand dollars, not exceeding two per centum, at the discretion of the county court.

SEC. 39. No sheriff, clerk, or the deputy of either, shall be eligible to the office of county treasurer.

SEC. 40. It shall be the duty of the county court of each county, on the application of any person holding scrip against such county, to cancel the same, and cause warrants to be issued therefor, in accordance with the provisions of this act.

[Approved and in force: March 3, 1838.]

CHAPTER 42.

COURTS AND JUDGES.

SECTION
1. Penalty for judge of circuit court failing to hold court, and how recovered.
2. Penalty for judge or justice not holding county courts, and how recovered.
3. Time of holding probate courts.

SEC. 1. If any judge of the circuit court shall fail to hold the circuit court in any county of his circuit, at the times required by law, such judge shall forfeit and pay to the State the sum of one hundred and fifty dollars ; and it shall be the duty of the clerk of the circuit court of the county in which any such failure may happen, to certify the same to the auditor of public accounts, and unless such judge shall satisfy the auditor, by conclusive testimony, that it was impossible for him to hold such court, it shall be the duty of the auditor to deduct the said penalty from the salary of such judge.

SEC. 2. If any presiding judge of the county court, or justice of the peace elected to assist in holding the county court, shall fail to attend and hold any of the terms of their respective courts, such judge or justice shall be fined in any sum not exceeding one hundred dollars, by motion in the circuit court, and it shall be the duty of the attorney

prosecuting in the circuit court of the county in which any such failure shall happen, to prosecute such judge or justice; and the court shall proceed to try the cause without the formality of pleading, and shall enter judgment against such delinquent judge or justice, unless it be made to appear that such failure was occasioned by absence from the county, sickness, or unavoidable accident.

SEC. 3. The probate court in each county in this State shall commence and be held on the Tuesday of the week in which the county court shall be held, and may continue from day to day, until the business before the court shall be despatched; and all process heretofore issued, or that may hereafter be issued, shall be returnable on said day.

[Approved and in force: March 3, 1838.]

CHAPTER 43.

COURTS OF RECORD.

SECTION

1. *Supreme court*—jurisdiction of.
2. powers of, as to form of writs and process.
3. *Circuit courts*—jurisdiction of.
4. *County courts*—jurisdiction of.
5. Presiding judge of county court to be probate judge.
6. *Probate courts*—jurisdiction of.
7. Presiding judge and two justices to be a quorum in county court.
8. Each court to have a seal.
9. Seal of circuit court to be the seal of probate and county court till others obtained.
10. Seals heretofore adopted to continue.
11. Impression by stamp to be sufficient.
12. Private seal, when and how to be used.
13. All courts mentioned in this act, to be courts of record.
14. Separate record to be kept in equity.
15. Record of county court and court of probate to be kept separate.
16. Record to be read, and when.
17. Bills of exception not to be inserted in transcripts, unless specially required.

SECTION

18. Writs, records, &c., in what language and how, made out.
19. Sittings of courts to be public.
20. General power of courts to issue writs and process.
21. Sheriffs to act in all courts in their counties.
22. Return of process, payment of money by sheriff, &c., enforced by attachment.
23. In what cases judge of supreme court disqualified from sitting.
24. Other judges, when disqualified.
25. Court not held on first day of term, how long adjourned from day to day.
26. At what time adjourned to next term.
27. Such continuance to be entered by the clerk.
28. Special adjourned sessions to be held, and how.
29. Special term for trial of criminals, and how held.
30. Order therefor to contain order for *venire facias* for a grand jury.
31. Notice thereof to be given to the attorney for the State, and when.

SECTION
32. Such notice, by whom served.
33. Such adjournment or special term not to interfere with other courts.
34. Not to be held within twenty days of the regular term.
35. Failure to hold court or continue, not to cause abatement or discontinuance.
36. Court not to be held on Sunday, except in what cases.
37. Definition of contempts.
38. Punishment thereof.
39. Proceedings upon contempts, and when notice to be given.
SECTION
40. Cause of committal to be set forth in order of commitment for contempt.
41. Such proceedings not to be extended for enforcing civil rights or remedies.
42. Punishment for contempt not to bar an indictment.
43. Sheriffs and clerks to furnish fuel, books, stationery, &c.
44. Accounts therefor, how audited.
45. How paid in supreme court.
46. Auditor to draw warrant therefor, on certificate of court.
47. In other courts, how paid.

SEC. 1. The supreme court, in cases not specially provided for by the constitution, shall, in all matters of law, have jurisdiction only of appeals and writs of error from final judgments and decisions, and, in all matters in equity, of appeals from the final judgment, decrees and orders of the circuit courts.

SEC. 2. Such court shall have power to direct the form of writs and process not being contrary to, or inconsistent with, the constitution and laws of this State.

SEC. 3. The circuit courts, in the respective counties in which they may be held, shall have jurisdiction, as follows: First, as courts of law, in all penal and criminal cases which shall not be otherwise provided for by law; second, exclusive original jurisdiction in all cases real, personal and mixed, which shall not be cognizable before the county and probate courts and justices of the peace; third, appellate jurisdiction from all judgments and orders of the probate courts, and justices of the peace in all cases not expressly prohibited by law, and shall have a superintending control over them; fourth, exclusive original jurisdiction, in each county in which they may be held, as courts of equity, in all cases when adequate relief cannot be had by the ordinary course of proceedings at law.

SEC. 4. The county court of each county shall have the following powers and jurisdiction: First, in all matters relating to county taxes, disbursement of money for county purposes, and in any other case that may be necessary for the internal improvement and local concerns of the county; second, the appointment of viewers, reviewers and overseers of the roads; third, to order the erection of bridges and direct the repairing of the same; fourth, the superintendence of all paupers; fifth, to grant merchants', pedlers', tavern, grocery and ferry li-

censes; sixth, to appoint judges of elections and fix the place of holding the same; seventh, to appoint justices of the peace to apportion hands to work on roads; eighth, to audit, settle and direct, the payment of all demands against the county; ninth, to have the control and management of the property, real and personal, belonging to the county; tenth, to have full power and authority, to purchase or receive, by donation, any property real or personal, for the use of the county, and cause to be erected all buildings necessary for the use of the county; eleventh, to sell and cause to be conveyed any real estate or personal property belonging to the county, and appropriate the proceeds of such sale for the use of the same.

SEC. 5. The presiding judge of the county court, in addition to the duties required of him as presiding judge of the county court, shall be judge of the court of probate.

SEC. 6. The court of probate shall have jurisdiction in the following cases: First, of all cases relative to the probate of last wills and testaments, the granting of letters testamentary and of administration, and repealing the same; second, the appointment and displacing of guardians of orphans, minors and persons of unsound mind; third, to bind out apprentices and to hear and determine all disputes between masters and apprentices; fourth, in the settlement and allowance of accounts of executors, administrators and guardians; fifth, to hear and determine all controversies respecting last wills and testaments, the right of executorship, administration or guardianship, or respecting the duties or accounts of executors, administrators and guardians; sixth, to award process, and cause to come before such court all persons whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators or guardians, or otherwise, shall be interested or in anywise accountable for any lands, tenements, goods, chattels, moneys or effects, belonging to any minor, orphan, or person of unsound mind, or the estate of any deceased person.

SEC. 7. The presiding judge of the county court, and any two justices of the peace of the county, shall be a quorum to transact business in the county court.

SEC. 8. Each of the courts, the powers and duties of which are defined by this act, shall preserve and keep a seal, with such emblems and devices as the court shall think proper.

SEC. 9. The seal of the circuit court in each county shall be the

seal of the county court and court of probate, until such courts shall procure separate seals.

SEC. 10. All seals of courts, that may have heretofore been adopted, shall be the seals of such courts until otherwise directed.

SEC. 11. The impression of the seal of any court by stamp shall be sufficient sealing in all cases where sealing is required.

SEC. 12. When no official seal is provided, the clerk may use his private seal for the authentication of any record, process or proceeding, required by law to be authenticated by the seal of his court; and the attestation of the clerk, stating that he has no seal of office and that he has affixed his private seal, shall be received as sufficient authentication without requiring any proof of such private seal, or that it was affixed by the clerk.

SEC. 13. All the courts mentioned in this act shall be courts of record, and shall keep just and faithful records of their proceedings.

SEC. 14. The records of proceedings at law shall be in books separate and distinct from the records and proceedings in equity.

SEC. 15. The records and proceedings of the county court shall be kept in books separate and distinct from the records and proceedings of the court of probate.

SEC. 16. Full entries of the orders and proceedings of all courts of record of each day shall be read in open court on the morning of the succeeding day; except on the last day of the term, when the minutes shall be read and signed at the rising of the court.

SEC. 17. In making out transcripts of records, except on writs of error and appeals, the bills of exception shall not be inserted, unless specially required by the applicant therefor.

SEC. 18. All writs, process, proceedings and records, in any court, shall be in the English language, except that the proper and known name of process and technical words may be expressed in the language heretofore and now commonly used; and shall be made out on paper or parchment in a fair and legible character, in words at length and not abbreviated; but such abbreviations as are now commonly used in the English language may be used; and numbers may be expressed by Arabic figures or Roman numerals in the customary way.

SEC. 19. The sittings of every court shall be public, and every person may freely attend the same.

SEC. 20. All courts shall have power to issue all writs and process which may be necessary in the exercise of their respective jurisdiction, according to the principles and usages of law.

SEC. 21. The sheriffs of the several counties shall be sheriffs of the several courts in their respective counties, and the sheriff in the county in which the supreme court is held shall be sheriff of that court.

SEC. 22. Each court may enforce by attachment the return of any writ or process issued out of the same court, and the payment of moneys had and received by any sheriff, coroner, constable, attorney, or collector, in his official capacity, and the delivery of papers entrusted to him officially, and unlawfully withheld.

SEC. 23. No judge of the supreme court, who is interested in any suit, or related to either party within the fourth degree of consanguinity or affinity, or shall have been of counsel in any suit or action, shall sit on the determination thereof without the consent of parties.

SEC. 24. No judge of the circuit court, justice of the county court, judge of the court of probate, or justice of the peace, shall sit on the determination of any cause or proceeding in which he is interested, or related to either party within the fourth degree of consanguinity or affinity, or shall have been of counsel, without consent of parties.

SEC. 25. If any court shall not be held on the first day of the term, such court shall stand adjourned from day to day, until the evening of the third day.

SEC. 26. If at that time the court shall not be opened, such court shall stand adjourned until the next regular term, and all cases, civil, penal and criminal shall stand adjourned over until the next term of such court.

SEC. 27. It shall be the duty of the clerk of such court, in such case, to enter in his docket a continuance of all suits and prosecutions.

SEC. 28. Special adjourned sessions of any court may be held in continuation of the regular term, upon its being so ordered by the court or judge in term time, and entered by the clerk on the record of the court.

SEC. 29. The judge of any circuit court may at any time hold a special term, for the trial of persons confined in jail, by making out a written order to that effect, and transmitting it to the clerk, who shall enter the same on the records of the court.

SEC. 30. The judge shall, in such order, direct the clerk to issue a *venire facias* to the sheriff, requiring him to summon a grand jury to attend such special term of the court, if any person shall be confined in jail who may not have been indicted.

SEC. 31. When a special term of the court shall be ordered under

the preceding provisions, the judge orderng the same shall cause a notice thereof to be served on the attorney for the State, prosecuting for such circuit, ten days before the commencement of such special term.

SEC. 32. The sheriff of the proper county, or any other person appointed by the judge, may serve such notice.

SEC. 33. No such adjourned session, or special term, shall interfere with any other court to be held by the same judge.

SEC. 34. No special term of the circuit court shall be held within twenty days of the regular term of such court.

SEC. 35. No writ, process, plea or proceeding whatsoever, civil or criminal, shall be deemed discontinued or abated by the failure of any term or session of any court, nor by the failure to enter a continuance of any suit, or cause, on the record; but the same shall be continued and proceed as if no such failure had happened.

SEC. 36. No court shall be opened, or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury; and every adjournment of a court on Saturday shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it may be necessary, in criminal cases, to preserve the peace or arrest the offenders.

SEC. 37. Every court of record shall have power to punish, as for criminal contempt, persons guilty of the following acts, and no others. First, disorderly, contemptuous or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority. Second. any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings. Third, wilful disobedience of any process or order, lawfully issued or made by it. Fourth, resistance, wilfully offered, by any person, to the lawful order or process of the court. Fifth, the contumacious and unlawful refusal of any person to be sworn as a witness, and when so sworn, the like refusal to answer any legal and proper interrogatory.

SEC. 38. Punishments for contempt may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fines shall in no case exceed the sum of fifty dollars, nor the imprisonment ten days. Courts shall always have power to imprison until their adjournment; and when any

person shall be committed to prison, for the non-payment of any such fine, he shall be discharged at the expiration of thirty days.

SEC. 39. Contempts committed in the immediate view and presence of the court, may be punished summarily; in other cases, the party charged shall be notified of the accusation, and have a reasonable time to make his defence.

SEC. 40. Whenever any person shall be committed for a contempt under the provisions of this act, the substance of his offence shall be set forth in the order, or warrant of commitment.

SEC. 41. Nothing in the preceding section shall be construed to extend any proceeding against parties or officers, as for contempt, for the purpose of enforcing any civil right or remedy.

SEC. 42. Persons punished for contempt under the preceding provisions, shall, notwithstanding, be liable to an indictment for such contempt, if the same be an indictable offence; but the court before which a conviction may be had on such indictment, shall, in forming its sentence, take into consideration the punishment before inflicted.

SEC. 43. The several sheriffs are authorized and required to furnish the fuel which may be necessary for the use of the court, and the clerks shall furnish all blank books and stationery for the use of the same.

SEC. 44. The several courts shall audit and adjust the accounts of the sheriff and clerk, for all expenditures made under this act, and certify the balance accordingly.

SEC. 45. All such expenditures, accruing in the supreme court, shall be paid out of the State treasury, out of any moneys appropriated for the contingent expenses of the supreme court.

SEC. 46. The auditor of public accounts shall draw his warrant for the amount of such expenditures, and the certificate of the court shall be a sufficient voucher.

SEC. 47. The expenses accruing in the circuit courts, county courts, and courts of probate, shall be paid out of the county treasury in which the court is held, in the same manner as other demands.

[Approved: February 28, 1838.]

CHAPTER 44.

CRIMINAL JURISPRUDENCE.

DIVISION I.

ART. I.—PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION
1. Definition of crime or misdemeanor.
2. Intention, how manifested.
3. Who is considered of sound mind.
4. No infant under twelve years of age to be convicted.
5. No lunatic or insane person.
6. No idiot.
7. Guilt of person counselling, &c. an infant, lunatic or idiot to commit crime.
8. In what cases married women not to be convicted.
9. Drunkenness to be no excuse, except in what case, and punishment of person causing it in such case.
10. Acts committed by misfortune or accident, when not criminal.
11. Person not to be convicted of crime or misdemeanor, where punishment less than death, when caused by threats, &c., and punishment of person so causing it.
12. Criminal becoming insane or lunatic, not to be tried.
13. Nor judgment to be given.
14. Nor punishment inflicted.
15. Questions of insanity or lunacy, how to be tried.

SEC. 1. A crime or misdemeanor consists in a violation of public law, in the commission of which there shall be a union or joint operation of act and intention or criminal negligence.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

SEC. 4. An infant under twelve years of age shall not be found guilty of any crime or misdemeanor.

SEC. 5. A lunatic, or insane person without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged.

SEC. 6. An idiot shall not be found guilty or punished for any crime or misdemeanor.

SEC. 7. Any person counselling, advising or encouraging an infant under the age of twelve years, a lunatic or idiot, to commit any offence, shall be punished for such offence, when committed, as principal, in the same manner, and to the same extent, as if he had committed the offence directly, and without the intervention of such infant, lunatic or idiot.

SEC. 8. Married women, acting under the threats, commands or coercion of their husbands, shall not be found guilty of any crime or misdemeanor, if it appear from all the facts and circumstances of the case, that violence, threats, commands or coercion were used; and in such cases the husband shall be prosecuted as principal, and receive the punishment which otherwise would have been inflicted on the wife if she had been found guilty.

SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person, for the purpose of causing the perpetration of an offence; in which case, the person so causing said drunkenness, for such evil purpose, shall be considered principal, and suffer the same punishment as would have been inflicted on the person committing the offence, if he had been possessed of sound reason and discretion.

SEC. 10. Acts committed by misfortune or accident, shall not be deemed criminal, when it appears there was no evil design, intention, or culpable negligence.

SEC. 11. A person committing a crime or misdemeanor not punishable with death, under threats or menaces which show that his life or person was in danger, or that he had a reasonable cause to believe, and did believe that his life or person was in danger, shall not be found guilty; and such threats or menaces being proved, the person compelling by such threats or menaces, the commission of the offence, shall be considered as principal, and suffer the same punishment as if he had perpetrated the offence.

SEC. 12. A person that becomes insane or lunatic, after the commission of a crime or misdemeanor, shall not be tried for the offence during the insanity or lunacy.

SEC. 13. If after verdict of guilty, and before judgment pronounced, such person becomes insane or lunatic, then no judgment shall be given while the insanity or lunacy shall continue.

SEC. 14. If after judgment, and before execution of the sentence, such convict becomes insane or lunatic, if the punishment be capital or

corporal, the execution thereof shall be stayed until the recovery of such convict from such insanity or lunacy.

SEC. 15. In all cases of insanity or lunacy being made a question in any legal procedure, or the execution thereof, it shall be the duty of the court having the jurisdiction of the case on which the question shall occur, to empanel a jury forthwith to try the question of lunacy or insanity at the time at which such question shall be made.

DIVISION II.

ART. I.—CRIMES AGAINST THE STATE.

SECTION
1. Definition of treason, and what evidence required.
2. Punishment of treason.
3. Misprision of treason, definition of.
4. Punishment of.
5. Mode of capital punishment.

SEC. 1. Treason against the State shall consist only in levying war against the State, or adhering to its enemies, giving aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 2. Any person convicted of treason shall suffer death.

SEC. 3. Misprision of treason shall consist in the knowledge and concealment of treason actually committed by others, without otherwise assenting to or participating in the crime.

SEC. 4. Any person duly convicted of misprision of treason, shall be punished by fine not exceeding one thousand dollars, and imprisonment not exceeding one year.

SEC. 5. The manner of inflicting capital punishments in all cases shall be by hanging the convict by the neck, until he shall be dead. No other mode of capital punishment shall be admitted in this State.

DIVISION III.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

ART. I.—MURDER.

SECTION
1. Definition of.
2. Manner of killing, importance of.
3. Express malice, definition of.
4. Implied malice.
5. Petit treason made murder.
6. Within what time the person injured must die.
7. Punishment of murder.

SEC. 1. Murder is the unlawful killing of a human being, in the peace of the State, with malice aforethought, either express or implied.

SEC. 2. The manner of the killing is not material, further than it may show the disposition of mind, or the intent with which the act was committed.

SEC. 3. Express malice is that deliberate intention of mind unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

SEC. 4. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing manifest an abandoned and wicked disposition.

SEC. 5. The distinction between petit treason and murder is abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and on conviction shall be punished accordingly.

SEC. 6. In order to make the killing either murder or manslaughter, it is requisite that the person injured die within a year and a day after the stroke received, or the cause of death administered; in the computation of which, the whole of the day on which the offence was committed, shall be reckoned the first day.

SEC. 7. The punishment of every person convicted of murder shall be death.

ART. II.—MANSLAUGHTER.

SECTION

1. Definition of manslaughter.
2. Must be from passion, on sufficient provocation.
3. Killing in commission of a lawful or unlawful act, when manslaughter.
4. Assisting in suicide, is murder.
5. Killing unborn quick child by violence to the mother, when manslaughter.
6. By drugs, &c.
7. Killing in heat of passion, in cruel and unusual manner.
8. Killing one attempting to commit a felony, &c.
9. Killing with a dangerous weapon in heat of passion.
10. Where a mischievous animal, by negligence of the owner, kills a person.
11. Drowning by overloading boat or vessel.
12. By steamboat explosions.
13. By boat or vessel running foul of another, &c.
14. By medicine administered by physician while intoxicated.

SECTION

15. Wilful poisoning, is murder.
16. Killing by officers, executing sentence of the law improperly.
17. Mother concealing death of child, to be adjudged guilty of manslaughter.
18. Not to prevent indictment for murder.
19. Punishment of manslaughter.
20. Definition of justifiable homicide.
21. Attempts to commit what crimes, to be a justification.
22. A man's house his castle.
23. What attempts to enter a habitation shall justify killing.
24. A bare fear not sufficient.
25. What must appear in cases of self defence.
26. Officers may kill, when assaulted in executing criminal process.
27. When in taking persons charged with felony, officer or private person justifiable.
28. What must appear in such case.

SECTION
29. Further definition of justifiable homicide.
30. Executioners justified.
31. But only when acting legally.
32. Definition of excusable homicide by misadventure.
33. Classification of other cases.
34. Justifiable or excusable homicide to work an acquittal.
35. Proof of circumstances of mitigation or excuse, by whom made.

SEC. 1. Manslaughter is the unlawful killing of a human being, without malice express or implied, and without deliberation.

SEC. 2. Manslaughter must be voluntary, upon a sudden heat of passion, caused by a provocation, apparently sufficient to make the passion irresistible.

SEC. 3. If the killing be in the commission of an unlawful act, without malice, and without the means calculated to produce death, or if the killing be in the prosecution of a lawful act, done without due caution and circumspection, it shall be manslaughter.

SEC. 4. Every person deliberately assisting another in the commission of suicide or self murder, shall be adjudged guilty of murder.

SEC. 5. The wilful killing of an unborn, quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be adjudged manslaughter.

SEC. 6. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug or substance whatever, or shall employ any instrument or other means, with intent thereby to destroy such child, and thereby shall cause its death, unless the same shall be necessary to preserve the life of the mother, or shall have been advised by a regular physician to be necessary for such purpose, shall be deemed guilty of manslaughter.

SEC. 7. The killing of a human being, without a design to effect death, in the heat of passion, but in a cruel and unusual manner, unless it be committed under circumstances that would constitute excusable or justifiable homicide, shall be adjudged manslaughter.

SEC. 8. Every person who shall unnecessarily kill another while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be adjudged guilty of manslaughter, or murder, according to the circumstances.

SEC. 9. The killing of a human being in the heat of passion, by or with a dangerous weapon, in any case except wherein the killing is herein declared to be excusable or justifiable, shall be adjudged manslaughter.

SEC. 10. If the owner of a mischievous animal, knowing its propensities, wilfully suffer it to go at large, or shall keep it without ordinary care, and such animal while at large or not confined, shall kill any

human being, who shall have taken all the precautions which the circumstances may permit, to avoid such animal, such owner shall be adjudged guilty of manslaughter.

SEC. 11. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such a quantity of other lading, that by means thereof such boat or vessel shall sink or be overset, and thereby any human being shall be drowned, or shall be otherwise killed, shall be adjudged guilty of manslaughter.

SEC. 12. If the captain or any other person having the charge of any steamboat used for the conveyance of passengers, or if the engineer or the person having charge of the boiler of such boat, or of any other apparatus for the generation of steam, shall, from ignorance or gross negligence, or for the purpose of excelling any other boat in speed, create, or allow to be created, such an undue quantity of steam, as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any human being shall be killed, every such captain, engineer, or other person shall be deemed guilty of manslaughter.

SEC. 13. If any captain, pilot, or other person having the charge or control of any steamboat or other vessel, shall wilfully and maliciously run such steamboat or other vessel, on board of or against any other vessel, or raft, and thereby any human being should be killed, he shall be adjudged guilty of murder or manslaughter, as the circumstances of the case may be.

SEC. 14. If any physician, while in a state of intoxication, without the design to effect death, administer any poison, drug, or medicine, or do any other act, to any person, which shall produce the death of such person, he shall be adjudged guilty of manslaughter.

SEC. 15. Every person who shall administer or cause to be administered to, or taken by any person, any poison, or other noxious or destructive substance or liquid, with the intention to cause the death of such person, shall be adjudged guilty of murder.

SEC. 16. If any officer exceed the bounds of moderation in executing the sentence under which he acts, either in manner, the instrument or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 17. If any woman shall endeavor privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, that it may not come to light, although it cannot

be proved that it was murdered, every such mother shall suffer the same punishment as for manslaughter.

SEC. 18. Nothing contained in the last preceding section, shall be so construed as to prevent such mother from being indicted for the murder of such bastard child.

SEC. 19. Every person convicted of manslaughter, shall be fined in any sum not less than one thousand dollars, nor more than ten thousand dollars, and shall be imprisoned not exceeding seven years.

SEC. 20. Justifiable homicide is the killing of a human being in necessary self-defence, or in defence of habitation, person or property, against one who manifestly intends or endeavors by violence or surprise, to commit a known felony.

SEC. 21. An attempt to commit murder, rape, robbery, burglary, or any other aggravated felony, although not herein specially named, upon either the person or property of any person, shall be justification of homicide.

SEC. 22. Every man's house or place of residence, shall be deemed and adjudged in law, his castle.

SEC. 23. A manifest attempt and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling or being therein, shall be a justification of homicide.

SEC. 24. A bare fear of those offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing; it must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under their influence, and not in a spirit of revenge.

SEC. 25. In ordinary cases of one person killing another in self-defence, it must appear that the danger was so urgent and pressing, that in order to save his own life, or to prevent his receiving great bodily injury, the killing of the other was necessary, and it must appear also that the person killed was the assailant, or, that the slayer had really and in good faith, endeavored to decline any further contest, before the mortal blow or injury was given.

SEC. 26. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justifiable in killing the assailant.

SEC. 27. If any officer or private person attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, forgery, counterfeiting, or any other crime made felony by the statute laws of this State, and he be resisted in the endeavor to take the person

accused, and by reason of such resistance the person so resisting be killed, the officer or private person so killing shall be justified.

SEC. 28. An officer or private person, to be justified in killing a person accused of any felony as herein provided, shall have used all reasonable efforts to take the accused without success, and there must have been, in all probability, no prospect of preventing injury from such resistance, or the escape of the person accused.

SEC. 29. Justifiable homicide may consist in unavoidable necessity without any will or design, and without any inadvertence or negligence in the party killing.

SEC. 30. An officer who in the execution of public justice, puts a person to death in virtue of a judgment of a court of competent authority, shall be justified.

SEC. 31. The officer must, however, in the performance of his duty in carrying into effect the execution, proceed in accordance with the sentence of the court, and the provisions of the law of the State.

SEC. 32. Excusable homicide by misadventure, is where a person in doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an axe, and the head flies off and kills a bystander, or where an officer is properly punishing a criminal, and happens to be the occasion of his death, it is only a misadventure, for the act of correction was lawful.

SEC. 33. All other instances which stand upon the same parity of reason and justice, as those enumerated, shall be adjudged murder, manslaughter, justifiable or excusable homicide, according to the circumstances of the respective cases.

SEC. 34. If the homicide with which any person shall be charged, shall appear upon the trial to be justifiable or excusable, such person shall be fully acquitted and discharged.

SEC. 35. The killing being proved, the burden of proving circumstances of mitigation, that justify or excuse the homicide, shall devolve on the accused, unless by the proof on the part of the prosecution it is sufficiently manifest, that the offence committed only amounted to manslaughter, or that the accused was justified or excused in committing the homicide.

ART. III.—MAIMING.

SECTION
1, 2, 3, 4. Definition of.
5. Definition of attempt to kill or maim.
6. Crime to be same, though a different person injured.
7. Punishment of maiming.
8. Punishment of maiming when done in a fight by mutual agreement.

SEC. 1. Maiming consists in unlawfully disabling a human being, by depriving him of the use of a limb, or member, or rendering him lame, or defective in bodily vigor.

SEC. 2. If any person shall, wilfully and of his malice aforethought, cut, or bite off the ear, cut out, or in any manner disable the tongue, put out an eye, slit, cut, or bite off the nose or lip of any person, he shall be adjudged guilty of maiming.

SEC. 3. If any person shall, of his malice aforethought, cut off an arm or leg, or any finger or toe, of any person, or shall break the bone of any arm, or bone of any part of the body of any person, so as to disable any such person, he shall be adjudged guilty of maiming.

SEC. 4. If any person shall, from malice aforethought, shoot, stab, cut, or in any manner wound and disable any person, he shall be deemed guilty of maiming.

SEC. 5. If any person shall shoot at any other person, with the intent to kill or wound such person, although he may miss or fail to hit the person aimed at, he shall be deemed guilty of an intent to kill or maim, and shall be punished as for maiming.

SEC. 6. If any person, of his malice, attempt to shoot or to do some bodily injury to some particular individual, and in attempting so to do, shall shoot or injure some third person, against whom the offender had no evil design, he shall be held and adjudged to be guilty, in the same manner as if the injury had fallen on the person intended.

SEC. 7. Any person convicted of maiming shall be fined not exceeding three thousand dollars, and imprisoned not exceeding seven years.

SEC. 8. If persons fight by mutual agreement and one of them be maimed, it shall not be deemed maiming within the meaning of this act; but the parties shall be punished by fine and imprisonment as for an aggravated affray, which fine shall not exceed one thousand dollars, and the imprisonment shall not exceed one year, at the discretion of the court.

ART. IV.—RAPE.

SECTION
1. Definition of.
2. Punishment of.
3. Punishment of sodomy, &c.
4. Punishment for administering drugs, &c. with intent to commit rape.
5. Punishment of compulsory marriage.
6. Punishment for an attempt.
7. For taking away females under the age of fifteen.
8. Punishment of negroes or mulattoes for these offences.

SEC. 1. Rape is the carnal knowledge of a female, forcibly, and against her will.

SEC. 2. Every person convicted of the crime of rape shall suffer death.

SEC. 3. The infamous crime against nature, either with man or beast, shall subject the offender, on conviction thereof, to death.

SEC. 4. Every person who shall, with the intent to commit a rape, administer to any female any potion, substance or liquid, with intent to produce such stupor, or imbecility of mind or weakness of body, as to prevent effectual resistance, shall upon conviction be punished with death.

SEC. 5. Every person who shall take unlawfully and against her will any woman, and by force, duress, or menace, compel her to marry him, or to marry any other person, or to be defiled; such offender shall suffer death.

SEC. 6. If any person shall unlawfully take any woman, as described in the last preceding section, with intent to compel her to marry him, or to marry any other person, or to defile her, without accomplishing the intent, such offender shall on conviction be adjudged guilty of felony, and be fined in any sum not less than five hundred dollars, and be imprisoned not less than one year, and shall stand in the pillory three hours.

SEC. 7. Every person who shall take away any female under the age of fifteen years, from her father, mother, guardian or other person having the legal charge of her person, without their consent, either for the purpose of prostitution, or concubinage, shall upon conviction be adjudged guilty of felony, and be fined in any sum not less than four hundred dollars, and be imprisoned not less than one year, and stand in the pillory one hour.

SEC. 8. If any negro or mulatto shall commit any of the before enumerated offences which are punished with death, he shall be punished in like manner; and if such negro or mulatto shall attempt to commit any of such offences, although he may not succeed, on a white woman, he shall suffer death on conviction thereof.

ART. V.—ASSAULT AND BATTERY.

SECTION
1. Definition of assault.
2. Punishment of assault with intent to commit felony.
3. Punishment for an aggravated assault with a deadly weapon.
4. Of a simple assault.
5. Definition of assault and battery.
6. Punishment of assault and battery.

SEC. 1. An assault is an unlawful attempt coupled with a present ability to commit a violent injury on the person of another.

SEC. 2. An assault with an intent to commit murder, rape, mayhem, robbery or larceny, shall subject the offender, on conviction thereof, to a fine not less than one hundred nor exceeding one thousand dollars, and to imprisoned not exceeding one year.

SEC. 3. If any person assault another with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant disposition, he shall be adjudged to be guilty of a high misdemeanor; and on conviction of any person for such offence, he shall be fined in any sum not less than fifty nor exceeding one thousand dollars, and imprisoned not exceeding one year.

SEC. 4. A simple assault, unattended with any apparent design to commit homicide or felony, shall, upon the conviction of any person thereof, be punished by fine not exceeding one hundred dollars.

SEC. 5. Assault and battery is the unlawful striking or beating the person of another.

SEC. 6. Every person guilty of an assault and battery shall, on conviction thereof, be fined in any sum not less than ten dollars, nor more than two hundred dollars.

ART. VI.—FALSE IMPRISONMENT.

SECTION
1. Definition of.
SECTION
2. Punishment of.

SEC. 1. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority.

SEC. 2. Any person convicted of false imprisonment, shall be fined in any sum not less than one hundred nor exceeding five hundred dollars, and the court may add thereto imprisonment not exceeding one year.

ART. VII.—KIDNAPPING.

SECTION
1, 2, 3, 4. Definition of.
5. Punishment of.
6. Punishment for not wearing the letter when sentenced.
SECTION
7. Officers to give information of such failure.
8. Law and sentence to be read to convicts.

SEC. 1. Kidnapping is the unlawful and forcible abduction or stealing away a man, woman or child, from his or her own country, and sending or taking him or her into another.

SEC. 2. Every person who shall unlawfully and forcibly steal, take, or arrest any man, woman or child, whether white, black, or of any other color, in this State, and carry him or her into any other part of this State, or into any other State, country or territory, shall be deemed guilty of kidnapping.

SEC. 3. Every person who shall forcibly take, or arrest any person whatsoever, with a design to take him or her out of this State, without having first established a claim to said person, under the laws of the United States or some one of the United States, or of this State, shall be adjudged guilty of kidnapping.

SEC. 4. Every person who shall hire, persuade, entice, decoy or seduce by false promises, misrepresentations and the like, any negro, mulatto, or colored person, not being a slave, to go out of this State, or to be taken or removed therefrom, for the purpose, and with the intent to sell such negro, mulatto or other colored person into slavery or involuntary servitude or otherwise, to employ him or her for his own use or to the use of another, without the free will and consent of such negro, mulatto or colored person, or otherwise the free will and consent of the parents or guardian of any negro, mulatto or colored persons under the age of twentyone years, shall be adjudged guilty of kidnapping.

SEC. 5. Every person duly convicted of the crime of kidnapping, shall be fined in any sum not less than one thousand dollars, and be imprisoned not less than one year, and the court, if the offence be aggravated, shall also adjudge that the convict stand in the pillory not exceeding five hours ; and as a part of the punishment on every conviction for the crime of kidnapping, the offender shall be sentenced to wear the letter K, at least six inches long, and three wide, of scarlet color, upon the outside of the outermost garment, on the back, between the shoulders, so as at all times to be fully exposed to public view as a badge of his crime, for a period not less than two nor more than five years, if by the verdict of the jury such letter shall be required to be worn.

SEC. 6. If any person shall be convicted of a crime against any of the criminal or penal laws of this State, a part of whose sentence shall be, by the verdict of a jury, to wear any letter of any dimensions or color, and in any manner, for a badge of his crime, who shall neglect or

refuse fully to comply with such part of his sentence, or shall be seen at any time in the period during which he shall be sentenced to wear such letter, without the same worn as the sentence directed, every person so offending shall on conviction thereof, forfeit and pay a fine of ten dollars, and shall be publicly whipped with ten lashes well laid on his bare back.

SEC. 7. It is hereby made the duty of every justice of the peace, grand juror, sheriff, coroner or constable, knowing or hearing of any offence against the provisions of the last preceding section, to give information thereof, so that the offender may be punished.

SEC. 8. The law in relation to the punishment, pains and penalties of all persons when convicted, so far as relates to them, and the sentence, shall be read to each convict, and the consequences fully declared to him, so that such person so convicted and sentenced, shall in no instance be deemed ignorant of the sentence pronounced on him.

ART. VIII.—ACCESSORIES.

SECTION
1. Definition of, before the fact.
2. Punishment of.
SECTION
3. Definition of, after the fact.
4. Punishment of.

SEC. 1. An accessory is he who stands by, aids, abets or assists, or who not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime.

SEC. 2. He who thus aids, assists, abets, advises or encourages, shall be deemed in law a principal and be punished accordingly.

SEC. 3. An accessory after the fact, is a person who after a full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime.

SEC. 4. Any person found guilty of being an accessory after the fact, shall be fined or imprisoned or both at the discretion of the court; the fine not to be less than fifty dollars nor more than five hundred, and the imprisonment not less than two months nor more than one year.

DIVISION IV.

OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

ART. I.—ARSON.

SECTION
1, 2, 3, 4, 5. Definition of.
6. Punishment of.
SECTION
7. Punishment for attempt to commit.
8. If loss of life ensue, it is murder.

SEC. 1. Arson is the wilful and malicious burning the house or other tenements of another person.

SEC. 2. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling house or other house, although not herein specially named, shall be deemed guilty of arson.

SEC. 3. If any person shall wilfully and maliciously burn, or cause to be burned any state house, court house, prison, church, bridge, or any other public building, although not herein specially named, such person, on conviction, shall be adjudged guilty of arson.

SEC. 4. If any person shall wilfully and maliciously burn or cause to be burned any steam boat or other vessel, or any water craft whatever; whether there be any person or goods on board or not, he shall be deemed guilty of arson.

SEC. 5. If any person shall wilfully set fire to his own buildings or other property, with the intent to burn the property of any other person, and the property or building of any other person shall thereby be burned, such person shall be deemed guilty of arson.

SEC. 6. Any person convicted of the crime of arson, shall be fined in any sum not less than five hundred dollars, and be imprisoned not less than one year, and shall stand in the pillory three hours, and shall wear the letter A, at least six inches long and proportionably wide, of scarlet color, on the outside of the outermost garment, on the back, between the shoulders, so as at all times to be fully exposed to view, as a badge of his crime, for a period not less than two years, if by the verdict of a jury such letter shall be required to be worn.

SEC. 7. If any person shall set fire to any building or tenement of another, with intent to burn the same, although such house or tenement may not be burned, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars, and be imprisoned not less than six months.

SEC. 8. If any person shall lose his life in consequence of any arson, the offender shall be deemed guilty of murder, and punished accordingly.

ART. II.—BURGLARY.

SECTION
1, 2, 3. Definition of.
4. Punishment of.
SECTION
5. Punishment where larceny also committed.

SEC. 1. Burglary is the unlawful entering a house, tenement or other building, boat, vessel or water craft, in the night time, with the

intent to commit a felony ; the manner of breaking or entering is not material, further than it may show the intent of the offender.

SEC. 2. If any person shall in the night time, wilfully and maliciously, and with force, break or enter any house, tenement, boat or other vessel, or building, although not specially named herein, with the intent to commit any felony whatever, he shall be deemed guilty of burglary.

SEC. 3. If any person shall in the night time wilfully and with or without force, break or enter any house, tenement, boat, or the like, with the intent to commit a felony, and shall then and there commit a felony or larceny, he shall be adjudged guilty of burglary, and also of felony or larceny, as the case may be.

SEC. 4. Every person convicted of a burglary, shall be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months, and receive on his bare back not exceeding thirty-nine lashes well laid on.

SEC. 5. For larceny committed jointly with burglary, the offender shall be held to restitution as in other cases of larceny, and the offender may be indicted for such offences, either separately or jointly in different counts of the same indictment.

ART. III.—ROBBERY.

SECTION
1. Definition of.
2. Punishment of.
SECTION
3. Punishment for sending threatening letters.

SEC. 1. Robbery is the felonious and violent taking of any goods, money or other valuable thing from the person of another by force or intimidation ; the manner of the force or the mode of intimidation are not material, further than they may show the intent of the offender.

SEC. 2. Every person convicted of robbery shall be fined in any sum not less than one hundred dollars, and imprisoned not less than one year ; and shall receive on his bare back not more than fifty lashes well laid on, and shall stand in the pillory two hours.

SEC. 3. If any person shall wilfully and maliciously send, or deliver or make, and for the purpose of being delivered or sent, shall part with the possession of any letter or writing with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, threatening therein to accuse any person of a crime, or to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any de-

scription belonging to another, he shall be deemed guilty of an attempt to rob, and on conviction shall be fined in any sum not less than one hundred dollars, and imprisoned not less than six months.

ART. IV.—LARCENY.

SECTION
1, 2, 3, 4, 5. Definition of.
6. Punishment for first offence.
7. Punishment for second.
SECTION
8. Accessories to make restitution to the county.

SEC. 1. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another.

SEC. 2. Larceny shall embrace every theft which unlawfully deprives another of his money or other personal property, or those means and muniments by which the right and title to property real or personal may be ascertained.

SEC. 3. The felonious taking and carrying away from the possession (actual or constructive) or custody of another, any bank note, bond, bill, note, receipt, or any instrument of writing whatever, although not herein specified or named, of value to the owner, shall be deemed larceny.

SEC. 4. The taking and removing away any goods or personal chattel of any kind whatever, with intent to steal the same, whether the articles stolen be in the immediate possession of the owner or not, unless it shall appear that the owner has abandoned his claim thereto, shall be deemed larceny.

SEC. 5. If the property stolen consist of any bank note, bond, bill, covenant, bill of exchange, draft, order or receipt, or any evidence of debt whatever, of any public security issued by the United States, or any scrip or other public security, issued by this State or any other State or Territory, or of any instrument whereby any demand, right or obligation shall be assigned, transferred, created, increased, released, extinguished or diminished, the money due thereon or secured thereby and remaining unsatisfied, or which in any event or contingency, might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be adjudged the value of the article stolen.

SEC. 6. Every person duly convicted of larceny shall be fined in any sum not less than the value of the thing stolen, nor more than five fold the value thereof, and shall receive on his bare back not exceeding thirtynine lashes well laid on, and stand in the pillory at least one hour.

SEC. 7. On a second conviction for larceny, the convict shall make like restitution to the owner of the property stolen, and receive the same punishment as for a first offence, and in addition thereto shall wear the letter T at least six inches long, and of proportionable width, of scarlet corlor, on the outside of the outermost garment, on the back, between the shoulders so as at all times to be fully exposed to public view, as a badge of his crime, for a period not less than two years, if such letter shall be required to be worn by the verdict of the jury.

SEC. 8. In all cases of the conviction of accessories, before the fact, where the principal would he held to make restitution to the party injured, the restitution shall be adjudged to the county.

ART. V.—HORSE AND NEGRO STEALING.

SECTION
1. Punishment for first offence.
SECTION
2. Punishment for second.

SEC. 1. If any person shall be convicted of larceny for stealing any negro or mulatto slave, or of stealing any horse, mare, mule, jack or jenny, the judgment of the court shall be, for a first offence, that such convict restore the property stolen to the owner, and pay him the value thereof, and if the property cannot be returned, he shall pay to the owner double the value thereof, and be fined in any sum not less than the value of the property stolen, nor more than ten fold the value thereof, and receive on his bare back not less than fifty lashes well laid on, and stand in the pillory not less than two hours, and shall wear the letter T of scarlet color, of the same dimensions and in the same manner as in cases of larceny.

SEC. 2. If any person shall be duly convicted a second time of larceny for stealing any negro, mulatto, slave, horse, mare, mule, jack or jenny, such convict shall suffer death.

ART. VI.—RECEIVING STOLEN GOODS.

SECTION
1. Punishment for.
2. Person accused may be tried, &c., before arrest of principal.
SECTION
3. Sale of stolen property not to divest title of right owner.
4. And action may be maintained therefor.

SEC. 1. Every person who shall for his own gain, or to prevent the owner from again possessing his property, buy or receive any stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to

have been so obtained, shall upon conviction be punished as in cases of larceny.

SEC. 2. Any person charged with receiving stolen goods, may be tried, convicted and punished as well before as after the arrest or conviction of the principal.

SEC. 3. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property.

SEC. 4. Any person losing property or any valuable thing by larceny, robbery or burglary, may maintain his action not only against such felon, but against any person whatsoever, in whose hands or possession the same may be found.

ART. VII.—UNLAWFUL MARRIAGES AND INCEST.

SECTION
1. Definition of bigamy.
2. Exceptions.
3. Venue of indictment for bigamy.
4. Unmarried person marrying wife or husband of another, subject to same punishment.
5. Punishment of incest, adultery and fornication.

SEC. 1. Every person having a wife or husband living, who shall marry any other person, whether married or single, except in the cases specified in the next section, shall be adjudged guilty of bigamy, and upon conviction shall be imprisoned not less than one year, and be deemed infamous ever afterwards.

SEC. 2. The last preceding section shall not extend to the following persons or cases: First, to any person, by reason of any former marriage, whose wife or husband by such marriage shall have been absent for five successive years, without being known to such person within that time to be living; nor, second, to any person whose wife or husband has been absent from the United States for the space of five years; nor, third, to any person whose former marriage has been dissolved by a court of competent authority; nor, fourth, to any person whose former marriage has been pronounced void by the decree or sentence of a court of competent authority, on the ground of the nullity of the marriage contract; nor, fifth, to any person by reason of any former marriage contract, by such person, within the age of legal consent, and which has been annulled by a decree of a court of competent authority.

SEC. 3. An indictment may be found against a person for a sec-

ond, third, or other marriage herein prohibited, in any county in which such person may be apprehended, and the like proceedings, trial, judgment and sentence may be had in such county, as if the offence had been committed therein, the venue in such indictment being immaterial.

SEC. 4. If any unmarried person shall knowingly marry the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, such person, on conviction, shall be subject to the same punishment as is prescribed in cases of bigamy.

SEC. 5. Persons marrying, who are within the degrees of consanguinity within which marriages are declared by law to be incestuous, or void absolutely, or who shall commit adultery or fornication with each other, shall upon conviction be punished as in cases of bigamy.

ART. VIII.—TRESPASS ON PERSONAL PROPERTY.

SECTION
1. Altering marks and brands.
2. Administering poison to animals.
3. Killing or maiming animals.
4. Cattle, &c. unmarked or unbranded, not the subject of larceny when more than twelve months old.

SEC. 1. If any person shall mark, brand, or alter the mark or brand, of any animal (the subject of larceny) being the property of another, with an intent to steal or convert the carcass or skin of any such animal to his own use, or to prevent identification thereof by the true owner, he shall be adjudged guilty of larceny, and punished in the same manner as if he had feloniously stolen such animal.

SEC. 2. Every person who shall knowingly administer any poison to any horse, ass, mule, or to any cattle, hog, sheep, goat or dog, or maliciously expose any poisonous substance with intent that the same shall be taken or swallowed by any of the aforesaid animals, shall upon conviction be adjudged guilty of a misdemeanor, and the jury who shall try such case shall assess the amount of damages, if any actual damage have accrued, occasioned by such poisoning or intent to poison, and the court shall render judgment in favor of the party injured, for three fold the amount so assessed by the jury, and the offender shall moreover be imprisoned not less than six months.

SEC. 3. If any person shall wilfully and maliciously, by any means whatsoever, kill, maim or wound any animal of another, which it is made larceny to steal, he shall be punished as in the preceding section is provided.

SEC. 4. Persons who own cattle, hogs or sheep, which run at large in the range or woods, shall designate such animals by brands or ear-marks, if such animals be over twelve months old; otherwise, if taken and converted to the use of any other person, such person shall not be deemed guilty of larceny, but the owner may have his action of trover and conversion for the value of such unmarked or unbranded animals.

ART. IX.—TRESPASS ON REAL ESTATE.

SECTION
1. By taking things attached to the freehold, when larceny.
2. Trespass by cutting down, injuring or carrying away wood, &c.
3. By burning or setting adrift wood, plank, &c.
4. By breaking down bridges or mill dams, &c.
5. By removing corner stones, defacing marks of survey, &c.
6. By taking cord wood, without paying therefor.
7. Breaking down or removing milestones, guide posts, &c.

SEC. 1. If any person shall sever from the soil of another any vegetable or produce growing thereon, of the value of one dollar or more, or shall sever from any building or frame, any gate or fence, or other railing or inclosure, or any part thereof, or any material of which it is composed of like value, and shall take and carry away or convert the same to his own use, with intent to steal the same, he shall be adjudged guilty of larceny in the same manner as if the article so taken had been severed at some different and previous time.

SEC. 2. Every person who shall wilfully commit any trespass by cutting down or destroying any kind of wood or timber, standing or growing upon the lands of any other person, or carry away any kind of wood or timber that may have been cut down, and that may be lying on such land, or shall maliciously cut down, lop, girdle, or otherwise injure any fruit, ornamental or shade tree, or maliciously sever from the freehold any produce thereof, or any thing attached thereto, shall, upon conviction, be adjudged guilty of a misdemeanor, and be fined in any sum not less than fifty dollars.

SEC. 3. If any person shall wilfully and maliciously burn, injure or destroy any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft or part thereof, or shall cut loose, break, injure, sink or set adrift any canoe, skiff, boat or vessel, being the property of another, he shall be adjudged guilty of a misdemeanor, and on conviction shall be punished as in cases of larceny.

SEC. 4. Every person who shall wilfully and maliciously cut down, break, injure or destroy any bridge, or mill dam or other dam, or levee, erected or constructed to create hydraulic power, or to prevent the overflow of lands, or any embankment necessary to support such dam or levee, or shall make or cause to be made any aperture in such dam or embankment, with intent to destroy or injure the same, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding five thousand dollars.

SEC. 5. Every person who shall knowingly and maliciously remove any monument of stone or other durable material, erected for the designation of any corner or other point in the boundary of any lot or tract of land, or of the State or any legal division of the State, or shall alter or deface the marks upon any tree, post or other monument, made for the purpose of designating any point in such boundary, or shall cut down or remove any tree upon which any such mark shall be made, with the intent to destroy such marks, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than one hundred dollars.

SEC. 6. If any owner, master, clerk, or any other person or persons, having charge, or belonging to any boat, vessel or raft, shall take any cord wood, or any other species of property from the owner or his agent, without paying the customary price for the same at the time, he shall be deemed guilty of a misdemeanor, and shall be fined for every such offence, not less than fifty dollars, nor more than two hundred, one half to be paid to the person injured, and the other half to the county.

SEC. 7. Any person who shall wilfully and maliciously break, or destroy, or remove any mile stone, post, or any guide board, erected by authority of law, on any public highway, or shall deface or alter any inscription on any such post, stone or board, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than ten dollars.

ART. X.—EMBEZZLING.

SECTION
1. Of furniture, &c., by tenants or lodgers.
2. Of records, &c., by officers.
3. By clerks, servants and apprentices.
4. What evidences of debt are included.
5. By carriers or other bailees.
6. Masters, clerks and supercargoes of steamboats, &c., deemed bailees.

SEC. 1. If any tenant or lodger shall take away, with intent to

steal, embezzle or purloin, any bedding, furniture, goods or chattels, or any fixture of any tenement, which by contract was let to him, to be used by him in, or with any house or apartment, or room, or lodging, whether the contract for letting shall have been made by such person, or by any other person on his behalf, he shall be adjudged guilty of larceny, and on conviction shall be punished as in other cases of larceny.

SEC. 2. If any officer or other person having the legal custody of any record, paper, document or proceeding, which by the law he is required to preserve for the use of the persons concerned therein, shall fraudulently take away, withdraw or destroy any such record, document, proceeding, paper, or instrument in writing, filed or deposited with him, or left in his custody, he shall be deemed guilty of larceny and punished in like manner.

SEC. 3. If any clerk, apprentice, or servant, of any private person, or of any copartnership, (except clerks, apprentices and servants within the age of sixteen years,) or any officer, agent, clerk or servant of any incorporated company, or any person employed in any such capacity, shall embezzle or convert to his own use, or shall take, make way with, or secrete with intent to embezzle or convert to his own use, without the consent of his master or employer, any money, goods, or rights in action, or any valuable security, or effects whatsoever belonging to any other person, which shall have come to his possession, or under his care or custody by virtue of such employment or office, he shall be deemed guilty of larceny, and on conviction shall be punished as in cases of larceny.

SEC. 4. Every embezzlement of any evidence of debt, negotiable by delivery, duly and actually executed by the master or employer of such clerk, agent, officer or servant, but not issued or delivered as a valid instrument, shall be deemed an offence within the meaning of the last preceding section, and shall be punished in like manner.

SEC. 5. If any carrier or other bailee shall embezzle, or convert to his own use, or make way with, or secrete with intent to embezzle, or convert to his own use, any money, goods, rights in action, property, effects or valuable security, which shall have come to his possession, or have been delivered to him, or placed under his care or custody, such bailee, although he shall not break any trunk, package, box or other thing in which he received them, shall be deemed guilty of larceny, and on conviction, shall be punished as in cases of larceny.

SEC. 6. Masters and clerks, or supercargoes of steamboats, and

other vessels navigating the waters within this State, shall be deemed bailees and public carriers within the meaning of this act.

ART. XI.—FRAUDULENT PRETENCES.

SECTION
1. Obtaining signature of another, or money, &c., by, defined as larceny.
2. And so if the false token be a note, bill, check, &c.
3. Criminal to be convicted, though guilty of larceny.
4. Receiving property under assumed character, larceny.
5. Punishment for being party to conveyance, &c., made to defraud.
6. For second sale of land, &c.
7. And double damages to be paid.
8. Persons convicted of bribery, perjury and felony, excluded from office and suffrage.

SEC. 1. Every person who with intent to defraud or cheat another, shall designedly by color of any false token or writing, or by any other false pretence, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, right in action, or other valuable thing or effects whatever, upon conviction thereof, shall be deemed guilty of larceny, and punished accordingly.

SEC. 2. If any false token by which any money, signature, property, right in action, or other valuable thing shall be obtained as specified in the last preceding section, be a promissory note, bill of exchange, check or evidence of debt, purporting to have been made or issued by or under the authority of any banking company or corporation not in existence, the person convicted of such cheat, shall be punished as in case of larceny.

SEC. 3. If upon the trial of any person indicted for any offence prohibited in the two last preceding sections, it shall be proved that he obtained the property or thing in question, in such manner as to amount to larceny, he shall not by reason thereof, be entitled to an acquittal; but he shall be convicted and punished as if the offence had been proved as charged.

SEC. 4. Every person who shall falsely represent or personate another, and in such assumed character shall receive any goods, chose in action, or property or effects of any description, belonging or intended to be delivered to the individual so personated, he shall be deemed guilty of larceny, and upon conviction shall be punished as for larceny.

SEC. 5. Every person who shall be a party to any conveyance, or assignment of any real estate, or interest in any real estate, goods,

or chose in action, of any rents or profits issuing therefrom, or to any charge upon such estate, with intent to defraud any prior or subsequent purchaser; or to hinder, delay or defraud creditors or other persons, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than five hundred dollars.

SEC. 6. If any person shall bona fide sell any tract or parcel of land, and shall make any written deed, conveyance, bond or other instrument in writing assuring the title of such land to the purchaser thereof, and shall afterwards sell and convey such tract of land to any subsequent purchaser, whether the subsequent purchaser have knowledge of the previous sale or not, such person shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than twice the value of the land so sold.

SEC. 7. Any person who shall violate any of the provisions of the two last preceding sections, shall, in addition to the fine to be assessed in the criminal prosecution, pay to every person so by him injured, or defrauded by any of the means therein mentioned, double the damages sustained by him, to be recovered by action on the case.

SEC. 8. Every person convicted of bribery, perjury, or felony, shall be excluded from every office of trust or profit, and from the right of suffrage in this State.

ART XII.—FORGERY OF RECORDS, CURRENCY AND SECURITIES, PUBLIC AND PRIVATE.

1. Of records and authentic matters.
2. Wills and acknowledgments.
3. Certificates of stock, scrip, &c.
4. Seals and impressions.
5. Records and returns.
6. Entries on records.
7. False certificates of probate or acknowledgment.
8. Bank notes.
9. What plates deemed to come within this act.
10. Uttering or receiving counterfeit notes.
11. Process, pleading and private instruments.
12. False entries in books of accounts of public officers.
13. Or of corporations.
14. By having forged notes, &c., in possession, intending to utter.
15. Or counterfeit coin.
16. By instruments in person's own name, to defraud another, of the same name.
17. By erasure or obliteration.
18. By connecting parts of different instruments.
19. What instruments considered writings.
20. What intent to defraud is sufficient.
21. By signing as agent for a corporation.
22. Punishment of forgery.

SEC. 1. Every person who shall wilfully and falsely make, alter, forge, or counterfeit any record, or other authentic matter of a public

nature, or any official instrument in writing, or of any corporate body, company, partnership, firm, or of an individual, no matter what the description of the person may be, if the instrument in writing falsely made, altered, forged, or counterfeited, shall be of such a nature, that if it were genuine, it might in some manner benefit one person to the injury of another, shall be deemed guilty of forgery.

SEC. 2. Every person who shall be convicted of having forged, altered or counterfeited ;—first, any will of real or personal property, or any deed, or other instrument in writing, being or purporting to be the act of another, by which any right or interest in real or personal property, shall be or purport to be transferred, or in any way changed or affected ; or second, any certificate or endorsement of the acknowledgment by any person of any deed or other instrument in writing, which may by law be recorded, made or purporting to have been made by any officer duly authorized to make such certificate or endorsement; or

SEC. 3. Every person who shall forge, counterfeit, or falsely alter ; first, any certificate of public security issued or purporting to have been issued under the authority of this State by virtue of any law thereof, or any State bond which may be issued, by or under the authority of the General Assembly of this State, or purporting to have been so issued, by which certificate, bond, or other public security the payment of any money absolutely, or upon contingency, shall be promised, or the receipt of any money, goods, or valuable thing shall be acknowledged ; or second, any certificate of any share, right, or interest in any public stocks, created by virtue of any law of this State, issued or purporting to have been issued by any public officer, or any other evidence of debt or liability of this State, whether absolute or contingent, issued or purporting to have been issued by any public officer, or any scrip or auditor's warrant, issued or purporting to have been issued by the auditor or treasurer of this State ; third, any endorsement or other instrument of writing, transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, bond, certificate of stock, evidence of debt, liability, scrip, or auditor's warrant, with the intent to defraud this State, any county, corporation, public officer, or other person, shall be deemed guilty of forgery.

SEC. 4. Any person who shall forge or counterfeit the seal of this State, or the seal of the secretary of this State, or the seal of any public officer, authorized by law to keep a seal, the seal of any court

of record, the seal of any notary public, the seal of any body corporate, or who shall falsely make, forge, or counterfeit any impression purporting to be the impression of any such seal, with the intent to defraud, shall upon conviction, be adjudged guilty of forgery.

SEC. 5. Every person who shall, with the intent to defraud, falsely alter, corrupt or falsify; first, any record of any will, conveyance, deed, or other instrument in writing, the record of which shall by law be evidence; or second, any record of any judgment in a court of record, or any enrolment of a court of chancery; or third, any return of any officer, court or tribunal, to any process of any court, shall upon conviction be adjudged guilty of forgery.

SEC. 6. Every person who shall falsely make, forge, counterfeit, or alter any entry in any book of record, or any instrument purporting to be any record or return specified in the last preceding section, with intent to defraud, shall upon conviction be adjudged guilty of forgery.

SEC. 7. If any officer authorized by law to take the proof or acknowledgment of any conveyance of real estate, or of any other instrument, which by law may be recorded, shall wilfully and falsely certify that any such conveyance or instrument was acknowledged by any party thereto, when in truth no such conveyance was acknowledged, or that any such conveyance was proved, when in truth no such proof was made, he shall be adjudged guilty of forgery.

SEC. 8. Every person who shall be convicted of; first, having made or engraved any plate in the form or similitude of any bank note, bill of exchange, post note, draft, check, certificate of deposit, or other evidence of debt, issued by any incorporated bank in this State, or any bank incorporated under the laws of the United States, or any State or Territory thereof, or under the laws of any foreign country, or government, without the authority of such bank; or second, having or keeping in his custody any such plate, without the authority of such bank, with the intent of using or having the same used, for the purpose of taking therefrom any impression to be passed, sold or uttered; or third, having or keeping in his custody or possession without the authority of such bank, any impression taken from any such plate, with the intent to have the same filled up, and completed for the purpose of being passed, sold or uttered; or fourth, having made or caused to be made, or having in his custody or possession an y plate, upon which shall be engraved any figures or words, which may be used for the purpose of falsely uttering any evidence of debt, issued

by any such bank, with the intent of having the same used for such purpose, shall be punished as for forgery.

SEC. 9. Every plate specified in the last preceding section shall be deemed to be in the form and similitude of the genuine instrument in the following cases: first, when the engraving on any such plate resembles and conforms to such parts of the genuine instrument as are required; second, when such plate shall be partly finished, and the part so finished, resembles and conforms to similar parts of the genuine instrument.

SEC. 10. Every person who shall be convicted of; first, having sold, exchanged or delivered for any consideration, any forged or counterfeit note, bill, bond, check, bank note, draft, or other evidence of debt, or any engagement for the payment of money, absolute, or upon any contingency, knowing the same to be forged or counterfeit, with the intention to have the same uttered or passed; or second, having offered any such note or other instrument for sale, exchange or delivery, for any consideration, with the like knowledge, and with the like intent; or third, having received such note or other instrument upon a sale, exchange or delivery, for any consideration, with like knowledge, and with the like intent, shall be punished as for forgery.

SEC. 11. Every person who shall, with the intent to injure or defraud, falsely make, alter, forge or counterfeit; first, any instrument of writing, being, or purporting to be, any process issued from any court, magistrate or officer, or being, or purporting to be, any pleading or proceeding filed or entered in any court of law or equity, or being, or purporting to be, any certificate, order or allowance, by any competent court or officer, or being, or purporting to be, any license or authority, authorized by any statute; or second, any instrument of writing, being, or purporting to be, any act of another, by which any pecuniary demand or obligation shall be, or shall purport to be created, increased, discharged or diminished, or by which any right or property whatever, shall be, or purport to be transferred, conveyed, discharged, or in any way or manner affected, by which false making, forgery, altering or counterfeiting, any person may be affected, bound or in any way injured in his person or property, shall upon conviction, be punished as for forgery.

SEC. 12. Every person who shall with the intent to defraud, make any false entry, or shall falsely alter any entry made in any book of accounts, kept in the office of the auditor of public accounts of this State, or in the office of the treasurer of this State, or of any county

treasurer, by which any demand, obligation, claim, right, or interest, either against or in favor of this State, or any county, city, town or individual, shall be, or shall purport to be discharged, diminished, increased, created, or in any manner affected, shall upon conviction be punished as for forgery.

SEC. 13. Every person who, with the intent to defraud, shall make any false entry, or shall falsely alter any entry made in any book of accounts, by any banking corporation within this State, or in any book kept by such corporation or its officers, by which any pecuniary obligation, claim or credit shall be, or purport to be discharged, diminished, increased, created, or in any manner affected, shall upon conviction thereof be punished as for forgery.

SEC. 14. Every person who shall have in his possession any forged, altered or counterfeit negotiable note, bill, draft, or other evidence of debt, issued or purporting to have been issued, by any corporation or company, duly authorized for that purpose by the laws of the United States, this State, or of any other State or government or country, the forgery of which is herein made punishable, knowing the same to be forged or counterfeited, with the intention to utter the same as true or false, or to cause the same to be uttered with the intent to injure or defraud, shall upon conviction, be subject to the same punishment as is prescribed for forgery.

SEC. 15. Every person who shall have in his possession any counterfeit of any gold or silver coin, which shall at the time be current in this State, knowing the same to be counterfeit, with the intention to defraud or injure by uttering the same as true or false, or by causing the same to be so uttered, shall upon conviction be subject to the same punishment as is herein provided for forgery.

SEC. 16. If any person shall with the intent to injure or defraud, make any instrument in his own name, intended to create, increase, discharge, defeat or diminish, any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and shall utter and pass the same under the pretence that it is the act of another, who bears the same name or the initials of whose name are the same, he shall, upon conviction, be punished for forgery as if he had forged the instrument of a person of a different name from himself.

SEC. 17. The total erasure or obliteration of any instrument or writing, with the intent to defraud, by which any pecuniary obligation or any right, interest or claim to property shall be, or shall be intended to be, created, increased, discharged, diminished, or in any manner

affected, shall be deemed forgery, in the same manner as the false altering of any part of such instrument or writing.

SEC. 18. Where different parts of two or more genuine instruments shall be so placed, or connected together, as to produce one instrument with intent to defraud, the same shall be deemed forgery, in the same manner as if the parts so put together were falsely made or forged.

SEC. 19. Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual firm, partnership, company or corporate body, or of any partner of a firm, partnership or company, or any officer or agent of such corporate body, and every writing purporting to be such signature, shall be deemed a writing within the meaning of the provisions of this act.

SEC. 20. Wherever by any of the foregoing provisions, an intent to defraud is required to constitute forgery, or any offence punishable as forgery, it shall be sufficient if such intent appear to defraud the United States, this State, or any other State or Territory, or any body corporate, any county, city, town, village, or any public officer in his official capacity, or any copartnership, company, firm or individual.

SEC. 21. The false making, forging or counterfeiting of any evidence of debt, issued, or purporting to have been issued, by any corporation having authority for that purpose, to which shall be affixed the pretended signature of any person as an agent or officer of such corporation, shall be deemed forgery in the same manner as if such person was at the time an officer or agent of such corporation, notwithstanding such person may never have been an officer or agent of such corporation, or although there never was any such person in existence.

SEC. 22. Every person duly convicted and adjudged guilty of forgery, or adjudged to suffer the pains and penalties of forgery, shall forfeit and pay to the county in which such conviction is had, a sum not less than one hundred dollars nor more than two thousand dollars, shall stand in the pillory for the space of one hour, and be imprisoned for not less than six months; and the court or jury may add to the sentence, that the convict shall wear the letter F, at least six inches long, and three inches wide, of scarlet color, on the outside of the outermost garment, on the back, between the shoulders, so as at all times to be fully exposed to view as a badge of his crime, for a period not less than one year, if such letter be required to be worn by the verdict of a jury.

DIVISION V.

OFFENCES AFFECTING THE ADMINISTRATION AND EXECUTION OF JUSTICE.

ART. I.—PERJURY.

SECTION
1, 2. Definition of.
3. Punishment of.
4. Subornation of perjury, definition of.
5. Punishment of.
6. Attempt to suborn, punishment of.
7. Indictments for perjury, requisites of.
8. for attempt to suborn.

SEC. 1. Perjury is the wilful and corrupt swearing, testifying or affirming falsely to any material matter in any cause, matter or proceeding before any court, tribunal, body corporate or other officer having by law authority to administer oaths.

SEC. 2. The wilful and corrupt swearing, affirming or declaring falsely to any affidavit, deposition or probate, authorized by law to be taken before any court, tribunal, body politic or officer, shall be deemed perjury.

SEC. 3. Every person who shall be convicted of wilful and corrupt perjury, shall be fined in any sum not less than one hundred dollars, be imprisoned not less than six months, and receive on his bare back not less than thirtynine lashes well laid on, and stand in the pillory not less than one hour; and the court may add to the punishment, that the convict wear the letter P, as is prescribed for wearing the letter K, for kidnapping, for a term not exceeding three years.

SEC. 4. Subornation of perjury is the procuring of any other person, by any means whatsoever, to commit any wilful and corrupt perjury, in any cause, matter, proceeding, affidavit, deposition or probate, in or concerning which such other person shall be legally sworn, affirmed or declared.

SEC. 5. Every person convicted of subornation of perjury shall be punished as herein before prescribed for wilful and corrupt perjury.

SEC. 6. Every person, who shall, by the offer of any valuable consideration, attempt, unlawfully and corruptly, to procure or entice any other person to commit wilful and corrupt perjury, in any cause, matter or proceeding whatever, in or concerning which such other person might by law be sworn or affirmed, shall, on conviction, be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months.

SEC. 7. In indictments for perjury, it shall be sufficient to set

forth the substance of the offence charged, and by what court, or before whom the oath or affirmation was taken; (averring such court or person to have competent authority to administer the same;) together with the proper averments to falsify the matter wherein the perjury is charged or assigned, without setting forth any part of the record, proceeding or process, either in law or equity, or any commission or authority of the court or person before whom the perjury was committed, or the form of the oath or affirmation or the manner of administering the same.

SEC. 8. In every indictment for subornation of perjury, or for any corrupt bargain, contract or attempt to procure another to commit perjury, it shall be sufficient to set forth the substance of the offence, without setting forth the record, proceeding or process, or any commission or authority of the court, or person before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same.

ART. II.—BRIBERY, EMBRACERY, &c.

SECTION
1. Bribery of witnesses, punishment of.
2. Jurors, arbitrators or referees, taking bribes.
3. Bribery of juror, arbitrator or referee.
4. Corruption of jurors.

SECTION
5. Improper conduct of person summoning jury.
6. Compounding or concealing crimes.
7. Proof of conviction of principal offender not necessary.

SEC. 1. Every person who shall, by bribery, menace or other means, directly or indirectly, induce or attempt to induce any witness to absent himself or avoid a subpœna or other process, or to withhold his evidence, or shall deter or attempt to deter him from offering or giving evidence in any cause, matter or process, civil or criminal, shall on conviction be adjudged guilty of a misdemeanor, and fined not exceeding three hundred dollars, and be imprisoned not exceeding one year.

SEC. 2. If any person summoned as juror, or chosen an arbitrator, or appointed a referee, shall take any thing to give his verdict, award or report, or shall receive any gratuity, reward or gift from any party to such proceeding or prosecution, for the trial of which such person shall have been summoned as a juror, or for the hearing of which he shall have been chosen an arbitrator, or appointed a referee, he shall on conviction be adjudged guilty of a misdemeanor, and be fined in any sum not less than one hundred dollars, and imprisoned not less than six months.

SEC. 3. Every person who shall corrupt, or attempt to corrupt, any other person summoned or sworn as a juror, or chosen an arbirator or appointed a referee for the hearing of any matter, by giving or offering to give any gratuity or gift whatever, with the intent to bias the mind of such juror, arbitrator or referee, or incline him to be more favorable to one side than the other, in relation to any cause, matter or proceeding which may be pending in the court to which such juror shall have been summoned, or in which such referee or arbitrator shall be appointed or chosen, shall be deemed guilty of a misdemeanor, and on conviction shall be punished as in the preceding section.

SEC. 4. If any person summoned or sworn as a juror, in any case, shall promise or agree to give any verdict for or against any party, in any case or proceeding, civil or criminal, or shall receive any paper, evidence or information from any one, in relation to any matter or cause for trial for which he shall be summoned or sworn, without the authority of the court or officer before whom such juror shall have been summoned, and without immediately disclosing the same to such court or officer, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months.

SEC. 5. Every person whose duty it shall be to select or summon any jurors, in any court, or before any officer, who shall be guilty of any unlawful, partial or improper conduct in selecting or summoning any juror, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than one hundred dollars.

SEC. 6. Every person who shall have a knowledge of the actual commission of any offence punishable with death, or any felony, who shall take any money or any gratuity, or receive any promise, engagement or undertaking therefor, upon agreement or understanding, express or implied, to compound or conceal such crimes, or to abstain from any prosecution therefor, or withhold any evidence thereof, shall, upon conviction, be fined in any sum not less than three hundred dollars, and imprisoned not less than three months.

SEC. 7. Upon the trial of any indictment for any offence specified in the last preceding section, it shall not be necessary to prove the conviction of the offender for the offence in relation to which any engagement or understanding, therein prohibited, shall have been made.

ART. III.—OBSTRUCTING PROCESS, &c.

SECTION
1. Punishment of.
2. Assaulting officer.
3. Setting at liberty or rescuing one convicted of a capital crime.
4. Setting at liberty or rescuing other felons.
5. Setting at liberty or rescuing other prisoners than felons.
6. Attempt at rescue or liberating.
7. Conveying arms or tools to prisoners.
8. Aiding prisoners to escape.
9. Punishment of prisoner attempting an escape.
10. Penalty of jailer permitting arms, tools, &c. to be conveyed to a prisoner.
11. Or conniving at an escape.
12. Failing to execute criminal process.
13. Refusing to receive prisoners.
14. Prisoner escaping to be imprisoned anew for the whole term.
15. Punishment of barratry.

SEC. 1. If any person shall knowingly and wilfully obstruct or resist any sheriff or other ministerial officer, in the service or execution of, or in the attempt to serve or execute any writ, warrant or process, original or judicial, in discharge of any official duty, in case of felony or any other case, civil or criminal, or in the service of any order or rule of court in any case whatever, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than fifty dollars, and may also be imprisoned not exceeding six months.

SEC. 2. Every person who shall assault, beat or wound any officer, while engaged in the service or execution of, or in attempting to serve or execute, any writ, warrant or process, original or judicial, or any order or rule of court, or while engaged in the discharge of any official duty, shall be deemed guilty of a misdemeanor, and on conviction shall be punished as is prescribed in the last preceding section.

SEC. 3. If any person, by force, set at liberty, or rescue from custody or prison, any person convicted of a capital offence, or shall set at liberty, or rescue, any person convicted of such crime, while going to execution, or during execution, every such person shall be deemed guilty of a high misdemeanor, and on conviction shall be fined in any sum not less than two hundred dollars, and imprisoned not less than six months.

SEC. 4. Every person who shall, by force, set at liberty or rescue any prisoner while in custody or confinement for a capital offence, before conviction, or shall by force set at liberty any prisoner in custody or confinement for a felony not capital, whether before or after conviction, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than one hundred dollars, and imprisoned not less than six months.

SEC. 5. Every person who shall by force, set at liberty, or rescue any person held in custody or prison for any offence, other than felony, whether before or after conviction, or upon any writ or process, original or judicial, in any civil case, he shall, upon conviction, be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months.

SEC. 6. The attempt to rescue and set at liberty, by force, any person in custody, or in prison, as described in any of the foregoing provisions, although the attempt fail of success, shall be deemed a misdemeanor, and on conviction, the offender shall be fined in any sum not less than one hundred dollars.

SEC. 7. Every person who shall convey into any jail or place of confinement, any disguised instrument, arms, or other thing, proper or useful to aid any prisoner in his escape, with the intent thereby to facilitate the escape of any prisoner, lawfully committed to, or detained in such jail or place of confinement, for felony or other criminal offence, or detained therein for any violation of any penal statute, or in any civil action, whether such escape be effected or attempted or not, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months.

SEC. 8. Every person who shall, by any means whatever, aid or assist any prisoner, lawfully committed to any jail, or place of confinement, or in custody of any officer, in any case, civil or criminal, to escape therefrom, whether such escape be effected or not, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

SEC. 9. Every person lawfully imprisoned in any jail, or other place of confinement, or held in custody of any officer, for any cause whatever, who shall attempt, by force or violence to any person, to effect his escape from such imprisonment or custody, although no escape be effected, shall be adjudged guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars, and imprisoned not less than six months; which imprisonment shall commence at the end of the term for which such person may be in prison.

SEC. 10. If any officer or other person, having by law the custody or charge of any jail, or other place of confinement, or the under officer or deputy of such officer or person, shall knowingly suffer or permit any disguised instrument, arms, or other thing proper or useful to aid

any person in his escape, to be conveyed into or remain in such jail or place, he shall, upon conviction, suffer the like punishment as the person conveying such disguised instrument, arms or other thing into such jail or place of confinement, would be liable to, according to the provisions of this act.

SEC. 11. If any officer, or his under officer or deputy, having the lawful custody of any prisoner, for any cause whatever, shall voluntarily suffer, or permit, or connive at the escape of such prisoner, from his custody, or permit him to go at large, he shall, upon conviction, be punished in the same manner as if convicted of aiding or assisting such prisoner to escape.

SEC. 12. If any sheriff or other officer shall wilfully and corruptly fail or refuse to execute any lawful process, whatever, which by law it is his duty to execute, requiring the apprehension or confinement of any person charged with a criminal offence, whereby such person shall escape, the officer so offending, shall be punished in the same manner as persons aiding or assisting an escape.

SEC. 13. If any jailer, or keeper of any jail, shall refuse to receive in the jail under his charge, any person lawfully committed to such jail on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction, be deemed guilty of a misdemeanor, and fined not less than one hundred dollars, and be dismissed from his office.

SEC. 14. If any person, sentenced to imprisonment in any jail or other place of confinement, on conviction for a criminal offence, shall escape, he shall be pursued, retaken and again imprisoned, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time he is retaken, and shall remain so imprisoned until tried for such escape, or until discharged by due course of law.

SEC. 15. Every person who shall be convicted of being a barrator, shall be fined in any sum he may be able to pay, not less than one hundred dollars, and may be imprisoned six months.

ART. IV. — DUELLING AND CHALLENGES.

SECTION
1. Punishment of duelling, where death ensues.
2. Where death does not ensue.
3. Punishment of seconds, surgeons, &c.
4. Persons concerned, to be competent witnesses.
5. Persons fighting, incapable of holding office.
6. Former conviction or acquittal in another State, may be pleaded.
7. Evidence necessary on the part of the prosecution.

SEC. 1. Every person who shall fight a duel with a deadly weapon, if death ensue, shall be adjudged guilty of murder.

SEC. 2. If death does not ensue, it shall be deemed a high misdemeanor, and upon conviction, the offender shall be fined in any sum he may be able to pay, not less than one thousand dollars, and be imprisoned not less than one year.

SEC. 3. Every person, who shall induce another to fight such a duel, or who shall send, or deliver any written or verbal message, purporting, or intended, to be such challenge, or who shall accept such challenge, or message, or who shall be present at the time and place of fighting any such duel with deadly weapons, either as second, aid or surgeon, or who shall advise, countenance, or assist in such duel, shall, upon conviction, be fined not less than five hundred dollars, and be imprisoned not less than six months.

SEC. 4. Every person offending against any of the provisions of this statute, shall be a competent witness against any other person offending in the same transaction, and shall be compelled to appear and give evidence before the grand jury, or in any court, in the same manner as other persons; but the testimony so given, shall not be used in any prosecution or proceeding against the person so testifying.

SEC. 5. Every person convicted of a violation of the provisions of the second section of this title, shall be incapable of holding, or being elected or appointed to, any office, post, or place of trust or profit, civil or military, under the constitution or laws of this State.

SEC. 6. Every offender under this title may plead a former conviction or acquittal for the same offence in another State or county, and if such plea be admitted or established, it shall be a bar to any further or other proceeding against such person for the same offence.

SEC. 7. On the trial of any person for any offence under the provisions of this title, if there was a written challenge to fight, or any other paper, it shall not be necessary on the part of the prosecution, to produce such challenge or paper, but it shall be sufficient to prove that there was a challenge, or agreement to fight, either verbal or written; or that such person did fight, or did agree to fight, as the case may be, shall be sufficient.

DIVISION VI.

OFFENCES AGAINST PUBLIC DECENCY.

ART. I.—VIOLATING THE GRAVE.

SECTION
1. Removing dead bodies from the grave.
2. Purchasing such bodies.
3. Opening graves.
SECTION
4. Punishment for such offences.
5. Not to extend to bodies of criminals.

SEC. 1. Every person who shall remove the dead body of any human being from the grave or other place of interment, for the purpose of stealing the same, or for the purpose of dissection, or from mere wantonness, shall be deemed guilty of a misdemeanor.

SEC. 2. Every person who shall purchase or receive the dead body of any human being, knowing the same to have been disinterred contrary to the provisions of this act, shall be deemed guilty of a misdemeanor.

SEC. 3. Every person who shall open a grave or other place of interment, with the intent to remove the dead body of any human being for the purpose of selling the same, or for the purpose of stealing the coffin, or any part thereof, or the vestments or other articles interred with any dead body, shall be deemed guilty of a misdemeanor.

SEC. 4. Persons convicted of any offence specified in this title, shall be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months.

SEC. 5. Nothing in this title contained shall extend to the bodies of persons executed under the criminal laws of this State.

ART. II.—OBSCENITY.

SECTION
1. Appearing in public, naked, &c.
2. Exhibiting indecent pictures, &c.
SECTION
3. Punishment therefor.

SEC. 1. Every person who shall appear in public places naked or partly so, with the intent of making a public exhibition of his nudity, or who shall make any obscene exhibition of his person shall be deemed guilty of a misdemeanor.

SEC. 2. Every person publicly exhibiting any obscene or indecent pictures or figures, shall be deemed guilty of a misdemeanor.

SEC. 3. Every person convicted under the provisions of the two preceding sections, shall be fined in any sum not less than fifty dollars.

ART. III.—GAMING.

SECTION
1. Keeping or exhibiting gaming tables, &c.
2. Being concerned and interested therein.
3. Betting thereat.
4. Permitting them carried on in house, boat, &c.
5. Keepers and exhibitors deemed vagrants.
6. Courts, judges, &c. to issue warrants to search for and burn gaming tables.
SECTION
7. Officer burning them, how entitled to his fees.
8. Betting at small games.
9. Offenders, how apprehended, &c.
10. Militia may be called on, if necessary.
11. Penalty for failure of militia officer or private to obey when called on.
12. This article to be given in charge to grand juries.
13. Construction to be given to this article.

SEC. 1. Every person, who shall set up, keep, or exhibit any gaming table, or gambling device, commonly called A. B. C., E. O., roulette, rouge et noir, or any faro bank, or any other gaming table, or gambling device, or bank of the like or similar kind, or of any other description although not herein named, be the name or denomination what it may, adapted, devised or designed for the purpose of playing any game of chance, or at which any money or property may be won or lost, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum, not less than one hundred dollars, and may be imprisoned any length of time, not less than thirty days nor more than one year.

SEC. 2. If any person shall in any way, either directly or indirectly, be interested or concerned in any gaming prohibited by the first section of this title, either by furnishing money, or other articles, for the purpose of carrying on gaming, or being interested in the loss or gain of such prohibited gaming, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined as in the first section.

SEC. 3. If any person shall be guilty of betting any money, or other valuable thing or any representative of any thing that is esteemed of value, on any of the games prohibited by the first section of this title, on conviction he shall be fined in any sum not exceeding one hundred dollars, nor less than fifty dollars.

SEC. 4. If the owner or occupant of any house, out house, or other building or any steamboat, or other vessel, shall knowingly permit or suffer any of the before mentioned games, tables or banks, or shall suffer any kind of gaming under any name whatsoever, to be carried on, or exhibited in their houses, or out houses, or other buildings, or on board of any steamboat, flat boat, keel boat or other vessel, on any of the waters within this State, on conviction thereof, every such owner or occupant shall be punished as is provided in the first section of this title.

SEC. 5. All and every keeper or exhibiter of either of the gaming tables, called A. B. C. or E. O. or any other table distinguished or known by any other name, letter or figure, faro bank, rouge et noir, or any gaming bank, of the same or like kind, with, or without a name, shall be deemed and rated as vagrants.

SEC. 6. It is hereby made and declared to be the duty, and required of the judges of the supreme court, the judges of the circuit courts, and the presiding judges of the county courts, and also of the justices of the peace, on information given, or on their own knowledge, or

where they have reasonable ground to suspect, that they issue their warrant to the sheriff, coroner or constable as the case may be most convenient, directing in such warrant a search for such gaming tables, or devices herein before mentioned or referred to, and directing that on finding any such, they shall be publicly burned, by the officer executing the warrant.

SEC. 7. The officer executing a warrant, and burning, by virtue thereof, any gaming device, as required in the last preceding section, shall, on his making his return to the officer who issued the same, and getting the statement of such judge or justice, that said warrant has been returned to him duly executed by the burning of any gaming device, stating what, or describing the device burnt, endorsed on such warrant, be entitled to his fees for such service, to be paid by the person keeping such gambling table.

SEC. 8. If any person shall be guilty of betting any money, or any valuable thing, on any game of brag, bluff, pocre, seven up, three up, twentyone, vingtun, thirteen cards, the odd trick, fortyfive, whist, or at any other game at cards, known by any name now known to the laws, or with any other or new name, or without any name, he shall, on conviction, be fined in any sum not less than ten dollars, nor more than twentyfive dollars.

SEC. 9. When it shall come to the knowledge of any sheriff, coroner or constable, or either of their deputies, that any person is guilty of any of the offences created or prohibited by this title, it shall be their duty to give notice thereof, to any judge or justice of the peace for the county, who shall issue his warrant, and cause such offender to be brought before him ; and it shall be the duty of the justice or judge to examine the matter in a summary manner, and to discharge, bail, or commit the offender, as the circumstances and the right of the case may require.

SEC. 10. Whenever any judge, justice of the peace, sheriff, coroner or constable, shall deem it necessary, they or either of them are hereby authorized to summon any militia officer and as many militia men as they shall deem necessary or competent, to assist in enforcing the provisions of this title.

SEC. 11. Every militia officer or militia man so summoned as a posse comitatus, failing or refusing to aid and assist therein, shall forfeit and pay, for the use of the county, as well as for the officer summoning such delinquent, a sum not less than ten dollars, nor more than one hundred dollars, to be recovered before any justice of the peace, in

the name of the county, and to be paid by such justice, when collected, one half to the county treasury and the other half to the officer summoning such delinquent: and execution shall issue on such judgment as in cases of debt.

SEC. 12. The provisions of this title shall be given in charge to each and every grand jury, at each term of the circuit court.

SEC. 13. The judges of the several courts in this State, shall in their constructions of the statutes prohibiting gaming, construe the same liberally, with a view of preventing persons from evading the penalty of the law, by changings of the name, or the invention of new names or devices, that now are, or may hereafter be brought into practice, in any, and in all kinds, of gaming, and all general terms of descriptions shall be so construed, as to have effect, and to include all such games and devices as are not specially named, and in all cases, when construction is necessary, it shall be in favor of the prohibition, and against the offender.

DIVISION VII.

VICE AND IMMORALITY.

ART. I.—PROFANE CURSING AND SWEARING.

SECTION
1. Punishment of.
2. Before magistrate, summarily punished.
SECTION
3. Offender not paying penalty, to be committed.

SEC. 1. Every person who shall profanely swear or curse, shall forfeit one dollar for every offence; if the offence be committed in the presence and hearing of any justice of the peace, mayor, or city judge, while holding a court, the offender shall be forthwith fined by the magistrate without any other proof whatever.

SEC. 2. If at any time whatever, the offence of profane cursing or swearing be committed in the presence of any such justice, mayor, or city judge, such magistrate may, in his discretion, fine the offender in a summary manner, without further proof, in any sum less than five dollars.

SEC. 3. If the offender do not forthwith pay the penalty incurred, with the cost, or give security for the payment of the same within six days, he shall be committed to jail, for every such offence, or any number of offences, whereof he was convicted at the same time, for not less than one day nor more than three days.

ART. II.—SABBATH BREAKING.

SECTION
1. Punishment for laboring on the Sabbath, and compelling servants, &c., to labor.
2. Each apprentice, servant, &c., deemed a separate offence.
3. Other sects may observe a different Sabbath.
4. Horse racing and cock fighting on Sunday.
5. Selling goods, &c., on Sunday.
6. Charity or necessity will justify.
7. This act not to apply to steamboats and manufactories.
8. Slaves may labor for themselves.

SEC. 1. Every person who shall on the Sabbath or Sunday, be found laboring, or shall compel his apprentice, servant or slave, to labor or to perform other services than customary household duties, of daily necessity, comfort or charity, shall be deemed guilty of a misdemeanor, and on conviction shall be fined one dollar for each separate offence.

SEC. 2. Every apprentice, servant or slave compelled to labor on Sunday, shall be deemed a separate offence of such master.

SEC. 3. Persons who are members of any religious society, who observe, as a Sabbath, any other day of the week, than the christian Sabbath or Sunday, shall not be subject to the penalties of this act, so that they observe one day in seven, agreeable to the observancy of their church or society.

SEC. 4. Every person who shall on the christian Sabbath or Sunday, be engaged in any horse race, or the running of any single horse, for any bet or wager on the speed of such horse or horses or for pastime, or for amusement without any bet or wager, or shall be engaged in any cock fight on any bet or wager, or for pastime, without bet or wager, shall be adjudged guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding one hundred dollars nor less than twenty dollars.

SEC. 5. Every person who shall on Sunday keep open any store, or retail any goods, wares or merchandise, or keep open any dram shop or grocery, or sell or retail any spirits or wine, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than ten dollars nor more than twenty.

SEC. 6. Charity or necessity on the part of the customer, may be shown in justification of the violation of the last preceding section.

SEC. 7. The provisions of this act shall not apply to steamboats, and other vessels navigating the waters of this State, nor to such manufacturing establishments as require to be kept in continual operation.

SEC. 8. Persons owning slaves in this State may permit such

slaves to labor for themselves on Sunday, if such labor is done voluntarily by such slaves, and without the coercion of the master and for the sole use of the slave.

ART. III.—DISTURBING RELIGIOUS CONGREGATIONS.

SECTION
1. Punishment for disturbance.
2. For injuring churches, camps, &c.
3. Selling liquor, &c., near camp grounds or meetings.
4. Not to include licensed tavern keepers or grocers.
5. Jurisdiction of justices of the peace.

SEC. 1. If any person shall maliciously or contemptuously disturb or disquiet any congregation, or private family, assembled in any church or other place, for religious worship, by profanely swearing, or using indecent gestures or threatening language, or committing any violence of any kind, to or upon any person so assembled, the person so offending, upon conviction thereof, shall be adjudged guilty of a misdemeanor, and shall be fined in any sum not less than twenty dollars, nor more than fifty dollars.

SEC. 2. If any person shall wilfully and maliciously injure or destroy any church, meetinghouse, or camps on any camp ground, used for public worship, or any furniture appertaining thereto, such person shall be deemed guilty of a misdemeanor, and on conviction, in addition to the penalty prescribed in the last preceding section, the jury shall assess the damages sustained by any such religious congregation or society, and the court shall enter judgment against such offender, in favor of such congregation or society, for double the damages so found by the jury.

SEC. 3. If any person shall contemptuously offer for sale, any ardent, vinous or other drinks within one mile of any camp ground during camp meeting, or within one mile of the place of meeting for religious worship of any christian denomination, the person so offending, upon conviction thereof, shall be adjudged guilty of a misdemeanor, and shall be fined in any sum not less than ten dollars.

SEC. 4. The prohibition in the preceding section shall not extend to any regularly licensed tavern keeper, or grocer, previously doing business within one mile of any such camp ground.

SEC. 5. Any justice of the peace, within any county of this State, when any offence shall be committed against the provisions of this title, shall have jurisdiction of such case, to cause such offender to be

brought before him, and on investigating the charge, he shall discharge, bail, or commit in default of bail, as the case may require.

DIVISION VIII.

OFFENCES AGAINST THE PUBLIC PEACE, AND AFFECTING THE SECURITY OF PERSONS AND PROPERTY.

ART. I.—RIOTS, ROUTS, &c.

SECTION
1. Pnuishments for riots, &c.
2. Officer to make proclamation to disperse.
3. On refusal to obey, officer to summon the posse and arrest the offenders.
4. If armed, the officer may summon the militia.
5. Persons summoned, to obey promptly.
6. Taking violent possesson of real estate.
7. Acts against public health, morals or justice, or the administration of law.
8. Agreements to commit felony, and advances thereto, without actual commission.
9. Conspiracies to cheat, and advances thereto, without actual commission.
10. Conspiracies to indict, and advances thereto, without actual commission.
11. Doing any act prohibited, or failing to do any act required by law.
12. Punishment of misdemeanors, where not defined.
13. Wearing concealed weapons.

SEC. 1. If three or more persons assemble together, with the intent, or being assembled, shall agree mutually, to assist each other to do an unlawful act, with force or violence, against the person or property of another, or against the peace, or to the terror of the people, and shall accomplish the purpose intended, or do any unlawful act in furtherance of such purpose, in a violent or turbulent manner; every person so offending, or who shall aid or assist in doing any unlawful act, shall be adjudged guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or by fine, not exceeding five hundred dollars, or both by fine and imprisonment, at the discretion of the court.

SEC. 2. When three or more persons shall be riotously, unlawfully or tumultuously assembled, as specified in the last preceding section, it shall be the duty of every judge, justice of the peace, sheriff, coroner and constable, who shall have knowledge, or be informed thereof, to make proclamation among the persons so assembled, or as near them as he can safely come, charging and commanding them immediately to disperse themselves, and peaceably to depart to their habitations or lawful business.

SEC. 3. If upon such proclamation being made, the persons so assembled shall not immediately disperse and depart as commanded, or if they shall resist such officer, or prevent the making such procla-

mation, such officer shall command those present, and the power of the county if necessary, and shall disperse such unlawful assembly, arrest the offenders, and take them before some judicial officer, to be dealt with according to law.

SEC. 4. If any person so assembled shall be armed, or make forcible resistance to the officer so making, or attempting to make such proclamation, such officer shall summon to his aid a sufficient number of the militia, or other persons in arms, to disperse such assembly, arrest the offenders, and maintain the authority of the law.

SEC. 5. All militia officers and others, who shall be summoned under the provisions of this act, shall give prompt obedience to such officer.

SEC. 6. Every person who shall take, or keep possession of any real estate by actual force or violence, without the authority of law, or who being armed with a deadly or dangerous weapon, shall by violence to any person entitled to the possession, or by putting in fear of immediate danger to his person, obtain or keep possession of any such real estate or property, without legal authority, shall on conviction be adjudged guilty of a misdemeanor, and be fined not less than fifty dollars, and be imprisoned not exceeding one year.

SEC. 7. If any person shall commit any act, injurious to the public health or public morals, or to the perversion or obstruction of public justice, or the due administration of the laws, he shall be deemed guilty of a misdemeanor.

SEC. 8. If two or more persons shall agree and conspire to commit any felony, and make some advance thereto, without committing the felony, they shall be deemed guilty of a misdemeanor.

SEC. 9. If two or more conspire to cheat any person out of any money or other property by false pretences or false tokens, and make some advance thereto, they shall be deemed guilty of a misdemeanor.

SEC. 10. If one or more persons shall contrive and intend to have any person indicted, on any false criminal charge, and make some advance thereto, although such person may not be indicted, he or they shall be deemed guilty of a misdemeanor.

SEC. 11. Where the performance of any act is prohibited, or the performance of any act is required, by any statute, and no penalty for the violation of such statute is imposed, either in the same section containing such prohibition, or requiring such act or duty, or in any other section or statute, the doing of such prohibited act, or the neglect of such required act or duty, shall be deemed a misdemeanor.

SEC. 12. Every person who shall be convicted of any misdemeanor, the punishment of which is not defined in this or some other statute, shall be punished by imprisonment, not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by fine and imprisonment both.

SEC. 13. Every person who shall wear any pistol, dirk, butcher or large knife, or a sword in a cane, concealed as a weapon, unless upon a journey, shall be adjudged guilty of a misdemeanor, and upon conviction thereof, in the county in which the said offence shall have been committed, shall be fined in any sum not less than twentyfive dollars, nor more than one hundred dollars, one half to be paid into the county treasury, the other half to the informer, and shall also be imprisoned not less than one, nor more than six months.

ART. II. — LIBEL.

SECTION
1. Definition of.
2. Punishment of.
3. The truth of the libel may be given in evidence.
4. Proclaiming a person a coward, for not fighting a duel, &c.
5. Publisher or printer required to testify.
6. Punishment of publisher or printer refusing to testify.
7. Their testimony not to be used against themselves.

SEC. 1. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, veracity, virtue or reputation, or to publish the natural defects, of one who is living, and thereby expose him to public hatred, contempt and ridicule.

SEC. 1. Every person, whether writer, printer or publisher, convicted of the crime of libel, shall be fined in any sum not exceeding five thousand dollars, and may also be imprisoned, not exceeding one year, at the discretion of the jury who shall pass on the case; and when any such case shall be decided without the intervention of a jury, then at the discretion of the court.

SEC. 3. In all prosecutions for libel, under the provisions of the preceding sections, the truth thereof may be given in evidence in justification.

SEC. 4. If any person shall, in any newspaper, handbill or other advertisement, written or printed, publish or proclaim any other person as a coward, or use any other opprobrious or abusive language, for not

accepting a challenge to fight a duel, or for not fighting a duel, such person so offending, on conviction thereof, shall be fined in any sum not less than five hundred dollars, and may be imprisoned not exceeding six months.

SEC. 5. The publisher or printer of any such newspaper, handbill, or other publication, may be required to testify against the writer of such publication or handbill.

SEC. 6. If any publisher or printer shall refuse to testify in relation to the premises, either before the grand jury, or any petit jury, or any judicial officer, he shall be deemed guilty of a flagrant contempt of the court, or other judicial officer, and shall be imprisoned until he shall testify ; and also fined, at the discretion of the court, or judicial officer, not exceeding five hundred dollars.

SEC. 7. The testimony given by any printer, or publisher of any such prohibited publication, handbill, or other advertisement, shall not be used in any prosecution, or civil suit against such witness.

ART. III. — SLAVES.

SECTION

1. Rights of slaves, when prosecuted.
2. Where white person would be fined, slaves to be corporally punished.
3. Masters of, how far responsible.
4. Masters may compound offences less than felony.

SECTION

5. Refusing to compound, slaves to be prosecuted.
6. Trial of, and evidence for slaves in felony.
7. Free negroes, &c. how liable.

SEC. 1. In the prosecution of slaves for any crime, they shall not be deprived of an impartial trial by a jury, and any slave who shall be convicted of a capital offence, shall suffer the same degree of punishment as would be inflicted on a free white person, and no other, and courts of justice before whom slaves shall be tried, shall assign them counsel for their defence.

SEC. 2. In all cases where a free white person would be punished by fine, a slave shall only receive corporal punishment.

SEC. 3. Masters of slaves in this State shall be held responsible for the full amount of single damages and costs of the trespass of his slaves, and any person injured by the trespass of any slave, shall have his action against the master for the damage he may have sustained by any such slave.

SEC. 4. In all trespasses and offences, less than felony, committed by any slave, on the person or property of another person, the master

may compound with the injured person, and punish his own slave, without the intervention of any legal trial or proceeding, and the compounding and satisfaction to the person injured, shall be a bar to any further prosecution.

SEC. 5. In all cases when the master refuses to compound and pay the damages sustained by the act of his slave, such slave shall be prosecuted and punished by the proper courts having jurisdiction of the offence, and the damages and costs recovered shall be adjudged against the master.

SEC. 6. In all cases of felony, the slave committing the same shall be tried in the same court, and the same rules of evidence observed, as in cases of white persons committing the like offence; excepting, that slaves may be witnesses for and against slaves.

SEC. 7. Free negroes and mulattoes shall be liable for trespasses and felonies, to the same extent and manner that white persons are, and tried in like manner; except, that persons of their own color shall be competent witnesses to testify for or against such free negro or mulatto.

[Approved: February 16, 1838.]

CHAPTER 45.

CRIMINAL PROCEEDINGS.

SECTION

KEEPING THE PEACE.

1. What officers shall have power to cause to be kept laws for preservation of peace, and require security therefor.
2. On complaint made that any person intends breaking peace, examination to be taken, and how.
3. Process thereon, if thought necessary, and to whom directed.
4. Recognizance to be entered into by such person, and condition thereof,
5. Entering into such recognizance, to be discharged. On failure, to be committed, and how.
6. If committed when to be discharged, and how.

SECTION

7. Disposition to be made of such recognizance.
8. For what offences in presence of such officer, person to be required to enter into recognizance, or be committed.
9. Person entering into, to appear before circuit court at next term. On failure, recognizance to be forfeited.
10. To be discharged, unless complainant appear, except for good cause shown.
11. On appearance, court to examine, and discharge, or continue recognizance, and for what time.
12. In what cases recognizance deemed to be broken, and on conviction for what offence.

SECTION
13. On evidence of conviction, court to order recognizance put in suit.
14. Breach in such action, and evidence thereof.

SEARCH WARRANTS.

15. In what cases and on what grounds, to issue.
16. How issued, and form of.
17. In what case to order house or place to be searched in night time.
18. By whom to be executed.

APPREHENSION.

19. What officers to issue process of apprehension.
20. Complaint of criminal offence committed, how to be made, and examination thereon.
21. Warrant how to be issued, and form of.
22. Where to be executed.
23. How endorsed, when issued by inferior officers, so as to run into another county.
24. Offender escaping into another county, officer in that county to issue warrant.
25. In what cases he may be taken before magistrate of county where arrested.
26. In what cases to be then admitted to bail.
27. Proceedings of magistrate when prisoner admitted to bail.
28. When not admitted to bail, or bail not given, to be taken before magistrate of county where offence committed.
29. In what cases prisoner to be originally taken there.
30. Before what magistrate to be taken.

EXAMINATION.

31. Of complainant, and witnesses for the prosecution.
32. Prisoner's counsel may be present, and cross-examine.
33. Prisoner then to be examined, but under what advice and information, and not upon oath.
34. No witnesses to be present at such examination.
35. His answers to be reduced to writing, read to him, and certified.
36. Witnesses of prisoner then to be examined.
37. Witnesses may be kept separate.
38. Evidence to be reduced to writing and signed by witnesses.
39. In what cases magistrate then to discharge.
40. In what case prosecutor and witnesses to be recognized.
41. In what case such witnesses to give security.
42. Persons incapable of contracting, to give security.
43. Witnesses refusing to do so, to be committed.
44. Offence being bailable, bail how taken.
45. When prisoner to be committed.
46. If committed for bailable offence, magistrate to endorse on warrant the sum in which bail is required.
47. Examinations and recognizances so taken, how to be disposed of.
48. Magistrate failing to certify and return them, how proceeeded against.
49. May associate other magistrates in the examination.
50. Offender committing felony attempting to escape, pursuit and arrest without warrant.
51. When arrested, same proceedings to be had, as if arrested on warrant.
52. Penalty of officer failing to pursue and arrest, or person summoned to assist.

BAIL.

53. When offender committed to jail for bailable offence, what officer may admit to bail.
54. When let to bail out of court, recognizance to be filed.
55. Let to bail by other court than where he is to be tried, clerk to transmit the recognizance.
56. Person charged with trespass not amounting to felony, and discharged on examination, prosecutor to pay costs.
57. In such case, when accused is held to bail, magistrate to certify name and place of abode of prosecutor.
58. Recognizances to be signed by party entering into same.

GRAND JURORS.

59. How many to be sworn. Court to appoint foreman.
60. Persons held to answer criminal charge, may object to competency of grand juror, and on what grounds.
61. Power of foreman to administer oaths.

SECTION
62. To appoint one member to be clerk, and minutes to be kept.
63. Prosecuting attorney to attend grand jury when required.
64. May attend on his own request, but not when they express their opinions or vote.
65. Clerk of court to issue subpœnas and other process, when required by.
66. Witness failing to attend, compulsory process to issue, and delinquent how punished.
67. Joint offenders may be sworn as witnesses, but their evidence not used against themselves.
68. Witness refusing to answer, &c. matter to be referred to court, and court how to act thereon.
69. Court deciding that witness should answer, and witness still refusing, how to be punished.
70. Committed for not answering, and still persisting, not to be discharged, except on recognizance.
71. When special grand jury may be summoned.
72. How to be summoned, sworn and to proceed.
73. In what cases grand jurors may be compelled to testify as to evidence given before them.
74. Not to be compelled to testify as to votes or opinions of individual grand jurors.
75. Not to disclose evidence given before them, nor that any indictment is found until offender taken.
76. Penalty for so doing.
77. What parts of this law to be read to them in their charge.

INDICTMENTS.

78. How many must agree in finding, and how endorsed.
79. When bill to be *ignored*, and how.
80. Indictments and presentments, how presented to court.
81. In what cases indictments not to be entered on minutes, at term when found.
82. In what cases prosecutor to be endorsed on indictment, and what statement to be made therein, when not required.

SECTION
83. Prosecutor, how to be endorsed.
84. If such bill be *ignored*, prosecutor to pay costs.
85. Fines and penalties to be recovered by indictment, when no special provision made.
86. In what cases indictment not to be open to inspection.
87. Officers of court not to disclose fact of indictment found, until when.
88. Penalty for so doing.
89. Not to include disclosure by issuing process.
90. Two indictments pending against one person, for the same offence, first to be quashed.

VENUE.

91. In cases of receivers of stolen property.
92. Of offences committed on steamboats, &c.
93. Of offences done upon boundaries of county.
94. In case of larceny, how property to be alleged, when stolen from partners.
95. *Venue* in cases of murder commenced in one county and death in another.
96. Commenced in this State, and death elsewhere.
97. In indictments against accessories.
98. Accessories how proceeded against.
99. *Venue*, in case of burglary or robbery in one county, and property taken into another.

JOINT OFFENDERS.

100. May be indicted jointly, but may sever on trial.
101. Trial not delayed, because some not arrested.

INDICTMENT.

102. For what defects not deemed invalid or quashed.

PROCESS.

103. To be issued by clerk, without order of court.
104. Offender when ordered in custody without process.

BAIL.

105. When offence is bailable, by whom offender let to bail.
106. And by no others.
107. Recognizance, where to be filed.
108. Causes to be continued without issuance

SECTION
of process, and process to issue at any time.
109. *Nol. Pros.* not entered without leave of court.

ARRAIGMENT, &C.
110. Copy of indictment to be delivered to prisoner, and how long before, in capital cases.
111. In other cases copy to be delivered on payment of fees.
112. Counsel to be assigned, when.
113. Manner of arraignment, and plea.
114. Plea in abatement and dilatory plea how verified.

TESTIMONY.
115. Persons indicted, &c. entitled to process for witnesses.
116. Disobedience to such process, how punished.
117. Fees not to be paid or tendered to witnesses.
118. In what cases commission to issue to take depositions.
119. Manner of taking depositions.

SPECIAL JUDGES.
120. In what cases to be commissioned.

CHANGE OF VENUE.
121. In what cases and by whom made.
122. On what showing, to be granted.
123. In what cases, without application.
124. Form of order for.
125. In what manner to be made.
126. Defendant in such case, if not in custody, to enter into recognizance, and form thereof.
127. Recognizance, by whom taken.
128. Defendant not being in custody, no such order to be effectual without recognizance.
129. Order not to be made after juror sworn. No second removal to be granted. What order to be made when defendant is in custody.
130. Duty of sheriff and jailor thereon.
131. Clerk of to make out and transmit transcript.
132. Transcript to be filed, and proceedings thereon.
133. Proceedings when transcript not received.
134. Defendant, witnesses, &c. under recognizance, to attend at such court.

SECTION
135. What shall be notice to such persons.
136. Costs of removal how adjusted and taxed.
137. Penalty for clerk failing to perform duties concerning removal, and how recovered.
138. Proceedings as to removal where there are more defendants than one.

PETIT JURY.
139. All issues of fact to be tried by.
140. No jury *de medietate linguæ*.
141. *Challenges*, peremptory, when allowed to defendant, and how many.
142. When and how many to the State.
143. How many jurors to be summoned.
144. Defendant to have copy of panel, and when.
145. What persons not to serve.
146. Who not to serve on trial of slave, or any person for injury to slave.
147. Who, when offence against person or property of another.
148. What opinions as to punishment of death to be disqualification.
149. In what cases witnesses not to serve.
150. Jurors to declare their knowledge of matters in dispute.

CHALLENGES.
151. What to be good ground of challenge for cause.
152. Challenges for cause, how tried.
153. Proceedings when cause of challenge discovered after juror sworn.

TRIAL.
154. Defendant, how to be present.
155. Defendant allowed to make proof.
156. General rules of proceeding.
157. Proceedings as to witnesses.
158. New trials and continuances.
159. Attorney for State not required to make affidavit for continuance.
160. In what cases indictments to be tried at first term, unless good cause shown.
161. In indictments for treason, overt act to be alleged in indictment, and what evidence admitted.
162. Rule as to overt acts in cases of conspiracy.
163. Penetration sufficient to constitute rape, &c.
164. Proof as to banking companies.
165. Charter of bank how proved in case of counterfeiting.

SECTION
166. Person injured or defrauded not incompetent to testify.
167. How trial may be severed.
168. *Exceptions* how taken, &c.

DISCHARGE FOR WANT OF TRIAL.

169. In what case and at what time granted when offender in prison.
170. When held to bail.
171. Limitation of such right to discharge.
172. In what case the court may refuse to discharge, for want of evidence.

JURY.

173. Duty of court as to charging jury.
174. Duty of jury as to ascertaining and declaring value of property.
175. In what cases to assess and declare punishment.

JUDGMENT.

176. Duty of court when punishment not fixed by jury.
177. Judgment, when jury assess punishment higher than allowed by law.
178. When lower than allowed.
179. In what cases court may reduce the punishment.
180. May require security to keep the peace, in addition.
181. Failing to give security, offender to be committed.
182. Such recognizance, how deemed to be broken.
183. Manner of entering judgment of conviction.

SENTENCE.

184. Proceedings of clerk upon sentence of imprisonment.
185. Upon sentence of death, warrant to be delivered to sheriff, and time of execution.
186. Time for execution, in what cases and by whom prolonged.
187. Convict becoming insane, jury of inquiry to be summoned.
188. Attorney for State to attend, and witnesses how obtained.
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SEC. 1. The following officers shall have power to cause to be kept all laws made for the preservation of the public peace, and in the execution of that power to require persons to give security to keep the peace, in the manner provided in this act, to wit: the judges of the supreme court, and the judges of the circuit courts throughout the State; the presiding judges of the county courts, and justices of the peace, in their respective counties; and mayors and chief officers of incorporate towns within the limits of their respective incorporations.

SEC. 2. Whenever complaint shall be made in writing and upon oath to any of such officers, that any one has threatened or is about to commit an offence against the property or person of another, it shall be the duty of such officer to examine such complaint, and any witnesses that may be produced on oath; to reduce such examination to writing, and cause the same to be subscribed by the witnesses so examined.

SEC. 3. If it shall appear on such examination, that there is reason to fear the commission of any such offence by the person complained of, it shall be the duty of such officer to issue a warrant, under his hand, reciting the complaint, directed to the constable of the township, or sheriff of the county, commanding him forthwith to apprehend and bring the person complained of before such officer.

SEC. 4. Upon such person being brought before such officer, he may be required to enter into a joint recognizance, in such sum as the officer shall direct, not exceeding two thousand nor less than fifty dollars, with one or more sufficient securities, to appear before the circuit court, on the first day of the next term of said court thereafter to be holden, and not depart the same without leave; and in the mean time to keep the peace toward the people of this State, and particularly toward the complainant.

SEC. 5. If such recognizance be entered into, the party complained of shall be discharged; but if he fail or refuse to enter into such recognizance, it shall be the duty of such officer to commit him to prison until he enter into the same, specifying in the warrant the cause of commitment, and the sum in which security is required.

SEC. 6. Any person committed for not entering into recognizance to keep the peace, as in this act provided, may be discharged by any officer authorized to bind to the peace within the county, upon giving such security as was originally required of such person.

SEC. 7. Every recognizance to keep the peace, taken pursuant to this or any other act, shall be transmitted by the officer taking the same to the clerk of the circuit court of the county, on or before the first day of the term of such court next to be holden after the taking thereof.

SEC. 8. Every person who in the presence of any officer in this act specified, or of any court of record, shall make an affray, or threaten to kill or beat another, or to commit any offence against his person or property; and all persons who, in the presence of such court or officer, shall contend with hot and angry words, shall by order of such court or officer, without further proof, be required to enter into recognizance, as before specified in this act; and in case of failure or refusal so to do, may be committed in like manner as before provided.

SEC. 9. Every person who shall have entered into a recognizance to keep the peace, shall appear before the circuit court of the county at the next term; and if he fail to appear, the court shall forfeit his recognizance, and order it to be prosecuted, unless reasonable excuse for the default be shown.

SEC. 10. When any person shall have been bound to keep the peace, on the complaint of another, and the complainant does not appear, the party recognized shall be discharged, unless good cause to the contrary be shown.

SEC. 11. On the appearance of the respective parties, and in cases where there is no complainant, the court shall examine the evidence, and may either discharge the recognizance taken, or require a new recognizance, as the circumstances of the case may require, for such time as shall appear necessary, not exceeding one year.

SEC. 12. No recognizance to keep the peace shall be deemed to be broken, except in the case provided for in the ninth section of this act, unless the principal in such recognizance be convicted of some offence amounting in law to a breach of such recognizance.

SEC. 13. Whenever evidence of such conviction shall be produced to the court in which the recognizance was taken or is filed, it shall be the duty of the court to order the attorney prosecuting for the State, for such circuit, to put such recognizance in suit.

SEC. 14. In the action on such recognizance the offence stated in the record shall be assigned as a breach, and such record shall be conclusive evidence of the matters therein contained.

SEC. 15. Upon complaint being made on oath, before any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complain-

ant suspects that such property is concealed in any particular house or place, if such officer shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

SEC. 16. Such warrant shall be directed to the sheriff of the county or to any constable, and shall command him to search the place where such property is suspected to be concealed, in the day time, which place shall be designated, and the property particularly described, and bring such property before the magistrate issuing the warrant.

SEC. 17. If there be positive proof that any property stolen or embezzled is concealed in any particular house or place, the warrant may order the searching of such house or place in the night time.

SEC. 18. Every search warrant shall be executed by a public officer, and not by any other person.

SEC. 19. The officers enumerated in the first section of this act, within the respective jurisdictions therein specified, shall have power to issue process for the apprehension of any person charged with a criminal offence, and to execute the powers and duties conferred by this act.

SEC. 20. Whenever complaint shall be made in writing, and under oath to any such officer that a criminal offence has been committed, it shall be his duty to examine the complainant and all witnesses that may be produced by him, on oath.

SEC. 21. If it shall appear on such examination, that any criminal offence has been committed, such officer shall forthwith issue a proper warrant, reciting the accusation and commanding the officer to whom it shall be directed to take the accused without delay, and bring him before such officer, to be dealt with according to law.

SEC. 22. Warrants issued by any judge of the supreme or circuit courts, may be executed in any part of the State; and warrants issued by any other officer, may be executed in any part of the county within which he is an officer, and not elsewhere, unless endorsed in the manner directed in this act.

SEC. 23. If the person against whom any warrant is issued, by a justice of the peace, presiding judge of the county court, mayor, or other chief officer of any city or town, shall escape or be in any other county, it shall be the duty of any officer authorized to issue a warrant, in the county in which such offender may be, or is suspected to be, to endorse his name thereon; and thereupon the offender may be arrested in such county, by the officer to whom such warrant may be directed, or any officer authorized to execute process within the county within which such warrant was so endorsed.

SEC. 24. When any person who shall have committed a criminal offence in one county, shall escape to another, any officer within such county, authorized to issue criminal process in the county in which such offender may be found, may issue his warrant for the apprehension of such offender, and secure him for trial, in the manner hereinafter directed.

SEC. 25. When any person shall be charged with a criminal offence out of the county in which the offence is alleged to have been committed, and such offence be not punishable with death, or imprisonment beyond one year, he shall, if he request it, be taken before some magistrate of the county in which he may be so arrested.

SEC. 26. If the offence charged in the warrant be not punishable with death or imprisonment for a term longer than one year, the magistrate before whom such prisoner may be taken under the provisions of the preceding section, may admit him to bail for his appearance before the next court having cognizance of the offence, to be held in the county in which the offence is alleged to have been committed.

SEC. 27. When the prisoner is let to bail, under the provisions of the preceding section, the magistrate shall certify that fact on the warrant, and deliver the same, together with the recognizance taken by him, to the officer having charge of the prisoner, who shall deliver the same, without unnecessary delay, to the clerk of the court having cognizance of the offence.

SEC. 28. If such magistrate shall refuse to let such prisoner to bail, or if such bail as may be required be not given, the officer having the prisoner in charge, shall take him before a magistrate of the county in which the offence is charged to have been committed, as herein before provided.

SEC. 29. If the offence charged in the warrant be punishable with death, or imprisonment beyond one year, the officer making the arrest shall convey the prisoner to the county in which the offence is charged to have been committed, before some magistrate therein.

SEC. 30. Persons arrested under any warrant for any criminal or penal offence, shall, when provision is not otherwise made, be taken before the person by whom the warrant was issued, or, if he be absent, or his office be vacant, then before the nearest magistrate in such county; and the warrant, by virtue of which the arrest was made, with the proper return thereon, signed by the officer making the arrest, shall be delivered to the magistrate.

SEC. 31. The officer before whom any such person shall be taken,

shall proceed as soon as may be, to examine the complainant and the witnesses produced in support of the prosecution, on oath, in the presence of the prisoner, in regard to the offence charged, and other matters connected with such charge which the officer may deem pertinent.

SEC. 32. If desired by the prisoner, his counsel, if he have any, may be present during the examination, and may cross-examine the complainant, and the witnesses on the part of the prosecution.

SEC. 33. After the examination of the complainant and the witnesses on the part of the prosecution, the magistrate shall proceed to take the examination of the prisoner, without oath, in relation to the offence charged; but, before it is commenced, he shall distinctly inform the prisoner of the charges made against him, and that he is at liberty to refuse to answer any question put to him, and shall allow the prisoner reasonable time to advise with his counsel, if he has any in attendance at such examination.

SEC. 34. None of the witnesses for or against the prisoner, shall be present at his examination.

SEC. 35. The answers of the prisoner on his examination shall be reduced to writing by the magistrate, or under his direction. Such answers shall be read to the prisoner, who may correct or add to them, and, when made conformable to what he declares to be the truth, shall be certified and signed by the magistrate.

SEC. 36. After the examination of the prisoner, his witnesses, if he have any, shall be sworn and examined.

SEC. 37. While a witness for or against the prisoner is under examination, the magistrate may exclude from the place in which such examination is had, all who have not been examined, and he may cause the witnesses to be kept separate, in order to prevent them from conversing with each other, until they shall all have been examined.

SEC. 38. The evidence given by the several witnesses examined, shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively.

SEC. 39. If, upon the examination of the whole matter, it shall appear to the magistrate that no offence has been committed, or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner.

SEC. 40. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty thereof, the magistrate shall bind, by recognizance, the prosecutor, and all ma-

terial witnesses against such prisoner, to appear and testify before the court having cognizance of the offence, on the first day of the next term thereof, and not depart such court without leave.

SEC. 41. Whenever such magistrate shall be satisfied that any of such witnesses will not fulfil the condition of such recognizance unless security is given, he may order such witnesses to enter into recognizance, as he shall deem proper, for such appearance and attendance.

SEC. 42. Minors and married women, and others by law incapable of contracting, being material witnesses, may be required to procure a security who will enter into a recognizance for their appearance and attendance as before specified.

SEC. 43. If any witness so required to enter into a recognizance, or give security, refuse to comply with such order, the magistrate may commit him to prison until he comply with such order, or be otherwise discharged.

SEC. 44. If the offence with which the prisoner is charged be bailable, and the prisoner offer sufficient bail, a recognizance in a sum not less than one hundred dollars shall be taken for his appearance to answer the charge against him, before the court in which the same is cognizable, on the first day of the next term thereof, and not depart the court without leave, and thereupon he shall be discharged.

SEC. 45. If the offence be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which he is to be tried, there to remain until he be discharged by due course of law.

SEC. 46. Whenever any person shall be committed to jail for a bailable offence, it shall be the duty of the magistrate committing such person to endorse on the warrant of commitment the sum in which bail is required.

SEC. 47. All examinations and recognizances taken in pursuance of the provisions of this act, shall be certified by the magistrate taking the same; and delivered to the clerk of the circuit court in which the offence is cognizable, on or before the first day of the next term thereof, except when the prisoner is committed to jail; then the examination of the prisoner and witnesses against him, duly certified, shall accompany the warrant of commitment, and be delivered therewith to the jailer.

SEC. 48. If any magistrate shall neglect or refuse to certify and make return of any examination or recognizance by him taken, he may, by rule of court, be required forthwith to return the same, and in case of disobedience may be proceeded against by attachment.

SEC. 49. Any magistrate before whom any complaint may be made, or before whom any prisoner may be brought, as herein before provided, may associate with himself any other magistrate of the same county; and the powers and duties herein mentioned, may be executed by such two magistrates, so associated.

SEC. 50. Whenever any felony shall be committed, and the offender attempt to escape, public notice shall be immediately given thereof, at all places near where the same was committed, and pursuit forthwith be made after the offender by sheriffs, constables, and all others who shall be thereto required by any such officers; and the offender may be arrested by such officers, or their assistants, without warrant.

SEC. 51. When any person shall be so pursued and arrested, he shall be immediately taken before some magistrate authorized to act under the provisions of this act, who shall proceed to examine the complaint against the accused, in the same manner as if he had been arrested on a warrant.

SEC. 52. Every sheriff, coroner, or constable, who shall fail or refuse to pursue and arrest any offender, as required by the two preceding sections, shall be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both fine and imprisonment; and every person summoned to aid in such duty, who shall neglect or refuse so to do, shall be fined in any sum not exceeding one hundred dollars.

SEC. 53. Whenever any person shall be committed to jail on a warrant of commitment issued by any magistrate, for a bailable offence, a recognizance with proper security may be taken by any court or magistrate authorized by law to issue a writ of habeas corpus.

SEC. 54. Whenever any prisoner is let to bail by any officer out of court, such officer shall immediately cause the recognizance taken by him, to be filed with the clerk of the court in which the prisoner is recognized to appear.

SEC. 55. When any prisoner is let to bail by any court other than that in which the offence is to be tried, it shall be the duty of the clerk of the court by which the prisoner was bailed, immediately to transmit the recognizance taken by such court, to the clerk of the court in which the party bailed is required to appear.

SEC. 56. Whenever any prisoner shall be brought before a magistrate, charged with any trespass against the person or property of another, not amounting to a felony, on the information of the party

injured, and the accused shall be discharged, the prosecutor shall be adjudged to pay the costs, and execution may be issued therefor.

SEC. 57. If, in any such case, the accused shall be held to answer for the offence, it shall be the duty of the magistrate to make out a certificate of the name and place of abode of the prosecutor, and return the same with the recognizance of such prisoner, to the proper court.

SEC. 58. All recognizances taken under the provisions of this act, shall be signed by the party entering into the same.

SEC. 59. There shall be not less than sixteen, nor more than twentythree persons sworn on any grand jury; and from the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman, and may also appoint a foreman in every case where any person appointed shall be discharged or excused before the grand jury shall be dismissed.

SEC. 60. Every person held to answer a criminal charge, may object to the competency of any one summoned to serve as a grand juror, before he is sworn, on the ground that he is the prosecutor or complainant upon any charge against such person, or that he is a witness on the part of the prosecution, and has been summoned or bound in a recognizance as such; and if such objection be established, the person so challenged shall be set aside, and another juror summoned.

SEC. 61. The foreman of every grand jury, from the time of his appointment until his discharge, shall have full power and authority to administer any oath in the manner prescribed by law to any witness who shall appear before such grand jury for the purpose of giving evidence in any matter cognizable by them.

SEC. 62. Every grand jury may appoint one of the members to be clerk thereof, to preserve and keep the minutes of their proceedings, and of the evidence given before them; which minutes shall be delivered to the attorney for the State prosecuting in the county, when so directed by the grand jury.

SEC. 63. Whenever required by the grand jury, it shall be the duty of the attorney for the State prosecuting in the county, to attend before them, for the purpose of examining witnesses in their presence, or for giving them advice upon any legal matter.

SEC. 64. Such attorney shall be allowed, at all times, to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them, and may be permitted to interrogate witnesses before them; but no such attorney, or

any other officer or person, except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes on any matter before them.

SEC. 65. Whenever thereto required by any grand jury, or the foreman thereof, or by the attorney for the State, the clerk of the court in which such jury is empanelled, shall issue subpœnas, and other process to bring witnesses before such grand jury to testify.

SEC. 66. If any witness duly summoned to appear and testify before any grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce attendance, and may punish the delinquent in the same manner, and upon the like proceedings as provided by law for disobedience of a subpœna issued out of such court in other cases.

SEC. 67. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness in relation to such crime or misdemeanor, but the testimony given by such witness shall in no instance be used against him in any criminal prosecution for the same offence.

SEC. 68. If any witness appearing before a grand jury, shall refuse to testify, or to answer any interrogatory, in the course of his examination, the fact shall be communicated to the court in writing, in which the question refused to be answered shall be stated; and the court shall thereupon determine whether or not the witness is bound to answer; and the grand jury shall be immediately informed of the decision.

SEC. 69. If the court determine that the witness is bound to answer, and he persist in his refusal to answer, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court.

SEC. 70. If any such witness shall be committed for a contempt on account of his refusal to testify, and shall persist in such refusal until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged until he enter into a recognizance, with sufficient security, for his appearance at the next term of the court, and not depart the same without leave.

SEC. 71. If any offence be committed or discovered during the sitting of any circuit court, after the grand jury attending such court shall have been discharged, such court may in its discretion by an order to be entered on the minutes, direct the sheriff to summon a special grand jury.

SEC. 72. The sheriff shall, in pursuance of such order, forthwith summon such grand jury from the inhabitants of the county qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner in all respects, as provided by law in respect to other grand jurors.

SEC. 73. The members of a grand jury may be required by any court to testify whether the testimony of a witness examined before such jury is consistent with, or differs from, the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person, upon a complaint against such person for perjury, or upon his trial for such offence.

SEC. 74. No member of a grand jury shall be obliged or allowed to testify or declare in what manner he or any other member of the jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question.

SEC. 75. No grand juror shall disclose any evidence given before the grand jury, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person not in actual confinement, until the defendant shall have been arrested thereon.

SEC. 76. Any grand juror violating the provisions of the preceding sections, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

SEC. 77. In charging grand juries, the court shall read to them the provisions of the preceding and following sections in relation to their duties, and in what cases, and under what circumstances, disclosures may or may not be made.

SEC. 78. No indictment shall be found, without the consent of at least twelve grand jurors; and when so found, and not otherwise, the foreman of the grand jury shall endorse thereon, under his hand, that such indictment is "A true bill."

SEC. 79. When there is not a concurrence of twelve grand jurors, in finding an indictment, the foreman shall endorse thereon "Not a true bill."

SEC. 80. All indictments found, and presentments made, by a grand jury, shall be presented to the court by the foreman, in the presence of such jury, and shall be there filed and remain as records of the court.

SEC. 81. No entry of an indictment found shall be made on the minutes of the court, at the term at which the same is found, unless the person indicted shall be in actual confinement or shall have entered into a recognizance to answer such indictment.

SEC. 82. No indictment for any trespass on the person or property of another, not amounting to a felony, shall be preferred, unless the name of the prosecutor be endorsed thereon, except where the same is preferred on the information or knowledge of one or more of the grand jury, or on the information of some public officer, in the necessary discharge of his duty, or on the testimony of some witness other than the party injured, in which case, a statement of the fact shall be made at the end of the indictment, and signed by the attorney for the State.

SEC. 83. The name of the prosecutor shall be endorsed on such indictment by himself, as such; or, where his name has been certified as prosecutor, with the examination, as provided in this act, the endorsement may be made by the attorney for the State.

SEC. 84. If any indictment so endorsed shall be returned by the grand jury "not a true bill," or if the defendant be acquitted on the trial, the prosecutor shall be adjudged to pay the costs.

SEC. 85. In all cases where any fine or penalty shall be imposed by any statute of this State, as a punishment for any offence, and no other provision is made for the recovery thereof, the same may be recovered by indictment.

SEC. 86. When an indictment shall be found against any person, for any offence known to the laws of this State, not in actual confinement, or held by recognizance to answer thereto, such indictment shall not be open to the inspection of any person, except the judge and clerk of the court, and the attorney prosecuting for the State, until the defendant shall have been arrested.

SEC. 87. No judge, clerk, attorney for the State, or other officer of any court, shall disclose the fact of any indictment being found, until the defendant therein shall have been arrested, or recognized to answer the same.

SEC. 88. Any judge, clerk or other officer, violating the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

SEC. 89. The provisions of the three preceding sections shall not extend to any officer making such disclosure by the issuing, or in the

execution, of any process on such indictment, or in any other manner, when it shall become necessary in the discharge of any official duty.

SEC. 90. If there shall be, at any time, pending against the same defendant, two indictments for the same offence, or two indictments for the same matter, although charged as different offences, the indictment first found shall be deemed to be suspended by such second indictment, and shall be quashed.

SEC. 91. When any person shall be liable to be prosecuted as the receiver of any personal property that may have been feloniously stolen, taken or embezzled, he may be indicted, tried and convicted, in any county where he received or had such property, notwithstanding such larceny may have been committed in another county.

SEC. 92. When any offence may have been committed within this State, on board of any steam, flat or keel boat, or other vessel, in the course of any voyage or trip, an indictment for the same may be found, and a trial and conviction thereon had, in any county through which, or any part of which, such boat or vessel shall have passed in the course of the same voyage or trip, and with like effect as in the county in which the offence was committed.

SEC. 93. When any offence may be committed on the boundary of two counties, or within half a mile of such boundary, or where the person committing the offence may be on one side, and the injury be done on the other side of such boundary, the indictment may be found, and the trial and conviction thereon had, in either of such counties; and if it is uncertain where the boundary is, the indictment may be found, and a trial had, in either county.

SEC. 94. When any offence shall be committed upon, or in relation to, any personal property belonging to several partners or owners, the indictment for such offence shall be deemed sufficient, if it allege such property to belong to any one or more of such partners or owners, without naming them all.

SEC. 95. When any mortal wound shall be given, or any poison administered, or any means shall be employed in one county, by which any human being shall be killed, and who shall die thereof in another county, an indictment for such offence may be found in either county; and the same proceedings shall be had thereon in all respects as if the offence had been committed and consummated in the county in which such indictment may be found.

SEC. 96. If any such wound or mortal injury shall be inflicted on any human being in this State, who shall die thereof in another State

or country, whether the same be within the jurisdiction of the United States or not, an indictment may be found, and a trial and conviction thereon had, in the county in which the wound or mortal injury was given or inflicted, in all respects as if the death had happened in such county.

SEC. 97. An indictment against any accessory to any felony, may be found in any county where the offence of such accessory may have been committed, notwithstanding the principal offence may have been committed in another county ; and the like proceedings shall be had therein, in all respects, as if the principal offence had been committed in the same county.

SEC. 98. An accessory before or after the fact may be indicted, arraigned, tried and punished, although the principal offender may not have been arrested and tried, or may have been pardoned or otherwise discharged.

SEC. 99. When property stolen in one county, and brought into another, shall have been taken by burglary or robbery, the offender may be indicted, tried and convicted for such burglary or robbery, in the county into which such stolen property was taken, in the same manner as if such burglary or robbery had been committed in that county.

SEC. 100. When two or more persons are charged with having committed the same offence jointly, all concerned shall be included in the same indictment, but they may sever in the trial.

SEC. 101. No trial on an indictment against several, shall be delayed because some of the defendants have not been arrested ; but those arrested or in custody shall be tried, and the cause continued as to those not arrested.

SEC. 102. No indictment shall be deemed invalid, or be quashed, nor shall the trial or judgment or other proceedings thereon be stayed, arrested, or in any manner affected, first, by reason of the omission or misstatement of the defendant's title, occupation, estate or degree, or of the county or place of his residence, where the defendant shall not be misled or prejudiced by such omission or misstatement ; or, second, by the omission of the words "with force and arms," or words of similar import ; or, third, by omitting to have charged any offence to have been committed contrary to a statute or statutes, notwithstanding such offence may have been created, or the punishment thereof have been declared, by statute ; or, fourth, by reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant.

SEC. 103. It shall be the duty of the clerk of the circuit court in which any indictment may have been found, and when the defendant shall not be in custody, or under recognizance to answer such indictment, immediately after such indictment is returned into court by the grand jury, to issue process to arrest the defendant, without any previous order of the court for that purpose.

SEC. 104. If any person shall be indicted for any offence by the grand jury, and such indictment shall be returned into court, and if such person shall be present in court the attorney for the State shall order the sheriff to take such person into custody, without process.

SEC. 105. When any indictment is for a bailable offence, the defendant may be let to bail by the court in which the indictment is pending, or, if such court be not in session, by the judge thereof, or by any judge, the presiding judge of the county court, or by the sheriff, when the court directs the clerk to endorse on the writ the amount of bail to be required.

SEC. 106. No court or officer, other than those specified in the preceding section, shall let any person to bail, against whom an indictment for any offence may be pending.

SEC. 107. When any person shall be let to bail, the officer taking the recognizance shall immediately file the same with the clerk of the court in which such indictment is pending.

SEC. 108. If any person indicted for a criminal or penal offence, shall abscond or flee from justice, or cannot be found to be served with process, or, being let to bail, shall not appear according to the condition of the recognizance, the cause may be continued from term to term, without issuing process on the indictment; and process may be issued at any time on such indictment, on the application of the attorney for the State.

SEC. 109. No attorney for the State shall enter a *nolle prosequi* on any indictment, or in any other way discontinue or abandon the same, without the leave of the court in which such indictment is pending being first entered on the minutes.

SEC. 110. It shall be the duty of the clerk of the court in which an indictment against any person for a capital offence may be pending, whenever the defendant shall be in custody, to make out a copy of such indictment, and cause the same to be delivered to the defendant or his counsel, at least fortyeight hours before he shall be arraigned on such indictment; but the defendant may, at his request, be arraigned and tried at any time after the service of such copy.

SEC. 111. Every person who shall be indicted for an offence, who shall be in custody, or held by recognizance to appear and answer such indictment, shall, on demand, and on the payment of the fees allowed by law therefor, be entitled to a copy of the indictment and all endorsements thereon.

SEC. 112. If any person about to be arraigned upon an indictment for a felony, be without counsel to conduct his defence, and shall be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner at all reasonable hours.

SEC. 113. When any person shall be arraigned upon any indictment, it shall not be necessary to ask him how he will be tried; and if he deny the charge in any form, or require a trial, or if he refuse to plead or answer, and in all cases where he does not confess the indictment to be true, the plea of not guilty shall be entered, and the same proceedings shall be had as if he had formally pleaded not guilty to such indictment.

SEC. 114. No plea in abatement or other dilatory plea to an indictment, shall be received by any court, unless the party offering such plea shall prove the truth thereof, by affidavit or some other evidence.

SEC. 115. Every person indicted or prosecuted for a criminal or penal offence shall be entitled to subpœnas and compulsory process for witnesses, in like manner, and under like circumstances as parties in civil suits.

SEC. 116. Disobedience to any such subpœna shall be punished in the same manner, and upon the like proceedings as provided by law in civil cases; and every delinquent witness shall be liable to the party at whose instance he was summoned, in the same manner, and to the same extent, as in case of witnesses summoned in civil cases.

SEC. 117. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the State or the defendant, but such witness shall be bound to attend, and be liable in the same manner as if the fees allowed by law had been paid or tendered.

SEC. 118. When any issue of fact is joined in any criminal case, and any witness for the defendant resides out of the State, or residing within this State, is ancient, sick, infirm, or is about to leave the State, such defendant may apply to the court in which the cause is pending, for a commission to examine such witness upon interrogatories thereto annexed; and such court shall grant the same on the same terms as are provided by law in civil cases.

SEC. 119. Interrogatories to be annexed to such commission, shall be settled by the court; and such commission shall be issued and returned in the manner prescribed by law in respect to commissions in civil cases; and the depositions taken thereon, and returned, shall be read in like cases, and with like effect as in civil suits.

SEC. 120. When any indictment or prosecution for a criminal offence shall be pending in any circuit court, against the judge thereof; or where the judge of such court is near of kin to the defendant in any indictment, by blood or marriage; or where the defendant is a slave, and such judge, or a person near of kin to him, is the owner, or has an interest in such slave; or where the offence charged is alleged to have been committed against the person or property of such judge or some person near of kin to him; or where the judge is in any wise interested, or shall have been counsel in the cause: in either or all of the cases specified in this section, it shall be the duty of the judge to certify the fact to the governor of the State; and it shall be the duty of the governor forthwith to commission specially some person learned in the law to hear and determine such cases.

SEC. 121. Any criminal cause pending in any circuit court, may be removed by the order of such court, or by the judge thereof in vacation, to the circuit court of another county, whenever it shall appear, in the manner hereinafter provided, that the minds of the inhabitants of the county in which the cause is pending, are so prejudiced against the defendant, that a fair and impartial trial cannot be had therein.

SEC. 122. Such order of removal shall be made on the application of the defendant by petition, setting forth the facts, verified by affidavit, if reasonable notice of the application be given to the attorney for the State, and the truth of the allegations in such petition be supported by the affidavit of some creditable person.

SEC. 123. Whenever it shall be within the knowledge of the court or judge, that facts exist which would entitle the defendant to the removal of any criminal cause on his application, such court or judge may make an order for such removal, without any application by the party for that purpose.

SEC. 124. Every order for the removal of a criminal under the foregoing provisions, shall state whether the same is made on the application of the party, or on facts within the knowledge of the court or judge making the same, and shall specify the cause of removal, and designate the county to which the cause is to be removed.

SEC. 125. Such order, if made in term time, shall be entered on

the minutes; and if made by a judge, in vacation, shall be in writing, and be signed by such judge, and shall be filed by the clerk with the petition, if any, as part of the record.

SEC. 126. When such order shall be made, the defendant, if not in custody, shall enter into recognizance with sufficient security, for his appearance, to answer the charge, in the court to which the cause is to be removed, on the first day of the next term thereof, and not to depart such court without leave.

SEC. 127. Such recognizances may be taken by the court or judge making the order of removal, or by any officer authorized by law to let to bail after indictment found; and when taken out of the court in which the cause is pending, the same shall be filed with the clerk thereof.

SEC. 128. No order for the removal of a cause shall be effectual in the case of any defendant not in confinement or custody, unless a recognizance be entered into as herein directed; nor unless the order of such removal be delivered before any juror is sworn in the cause; and in no case shall a second removal of the same cause be allowed.

SEC. 129. If the defendant be in actual custody, the court or judge granting the order of removal, shall also make an order commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed, and there deliver him to the keeper of such jail, together with the warrant or process by virtue of which he is imprisoned and held.

SEC. 130. The sheriff shall obey such order, without unnecessary delay, and shall endorse on the commitment or process, or order of court by which the prisoner is held in his custody, the reason of the change of custody, and shall deliver such warrant with the prisoner, to the keeper of the jail of the proper county, who shall give such sheriff a receipt therefor, and take charge of and keep the prisoner in the same manner as if he had been originally committed to such jail.

SEC. 131. Whenever any order shall be made for the removal of any cause under the foregoing provisions of this act, the clerk of the court in which the same is pending, shall make out a full transcript of the records and proceedings in the cause, including the order of removal, the petition therefor, if any, and the recognizance of the defendant, and of all the witnesses, and shall transmit the same, duly certified under the seal of the court, to the clerk of the court to which the removal is ordered.

SEC. 132. On the receipt of such transcript by the clerk of the

court, to which any such cause is removed, he shall file the same as a record of his court; and the same proceedings shall be had in the cause in such court, and in the same manner in all respects, as if the same had originated there.

SEC. 133. If such transcript shall not have been transmitted, or shall not have been received on or before the first term of the court to which the cause is ordered to be removed, or if such transcript shall be lost or destroyed, the cause shall not, by reason thereof, be discontinued; but such transcript, or another in lieu thereof, may be transmitted and filed, as required by this act, at or before the next succeeding term of such court; and proceedings shall be thereon had, as if no such failure or loss had happened.

SEC. 134. The defendant and all witnesses, and others who shall have entered into recognizance to attend the trial of any such cause, having notice of the removal thereof, shall be bound to attend at the time and place of trial in the county to which the cause is removed; and a failure so to do shall be deemed a breach of the recognizance.

SEC. 135. When the order of removal is made in term time, it shall be deemed a notice to every person who has entered into recognizance to appear at such term; and in all other cases, the notice shall be given in writing, signed by the attorney for the State, or the clerk of the court, and be served on the person so recognized, in the manner provided by law for serving other notices.

SEC. 136. The costs and expenses necessarily incurred in the removal of any such cause, under the foregoing provisions, shall be adjusted and allowed by the court where the cause is tried, and shall be taxed as other costs in the cause.

SEC. 137. If any clerk of the circuit court shall neglect or refuse to perform any duty in relation to the removal of a cause, enjoined on him by this act, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered by action of debt, in the name and to the use of the State.

SEC. 138. When there are several defendants in any indictment or criminal prosecution, and the cause of the removal thereof exists only as to part of them, the other defendants shall be tried, and all proceedings had against them, in the county in which the case is pending, in all respects as if no order of removal had been made as to any defendant.

SEC. 139. All issues of fact in any criminal or penal cause, shall

be tried by a jury, to be selected, summoned, and returned in the manner prescribed by law.

SEC. 140. No alien shall be entitled to a jury of part aliens or strangers for the trial of any indictment; but in every case, the jurors shall be such only as are qualified to serve according to the laws of this State.

SEC. 141. The defendant in every indictment for any criminal or penal offence shall be entitled to a peremptory challenge of jurors, in the following cases, to wit: First, if the offence charged is punishable with death, to the number of twenty, and no more. Second, in all cases of felony not punishable with death, twelve, and no more. Third, in all cases where the offence charged does not amount to a felony, to the number of six, and no more.

SEC. 142. The attorney for the State shall have a right to six peremptory challenges in all cases where the offence charged is a felony; and in all cases where the offence charged is less than a felony, he shall be entitled to three peremptory challenges, and no more.

SEC. 143. There shall be summoned and returned in every criminal cause, a number of qualified jurors equal to the number of peremptory challenges, and twelve in addition thereto.

SEC. 144. A list of the jurors summoned shall be delivered to the defendant in all cases where the offence charged is punishable with death, at least fortyeight hours before the trial, unless the defendant shall waive this right; and in other cases, before the jury is called, if such list be requested.

SEC. 145. No person who was a member of the grand jury or inquest by which any indictment was found in any cause, or who was a member of a jury of inquisition held by the coroner, or other officer, shall serve as a juror on the trial of such cause.

SEC. 146. Upon the trial of any indictment against any slave, or against any person for an injury to a slave, neither the owner of such slave, nor any person of kin to him by blood or marriage, shall serve as a juror.

SEC. 147. When any indictment alleges the offence to have been committed against the person or property of another, neither the injured party, or any person of kin to him, shall be a competent juror on the trial of such indictment; neither shall any person of kin to the prosecutor or defendant in any cause, serve as a juror on the trial thereof.

SEC. 148. Persons whose opinions are such as to preclude them

from finding any defendant guilty of an offence punishable with death, shall not be allowed or compelled to serve as jurors on the trial of an indictment for any offence punishable with death.

SEC. 149. No witness in a criminal case, shall be sworn as a juror therein, if challenged for that cause before he is sworn; but this section shall not be so construed, as to disqualify any person that may have been summoned by the defendant, in order to disqualify him for a juror, if the person so summoned knows nothing of the case.

SEC. 150. If any juror shall know any thing relative to the matter in issue, he shall disclose the same in open court.

SEC. 151. It shall be a good cause of challenge to a juror, that he has formed or delivered an opinion on the issue, or any material fact to be tried; but if it shall appear that such opinion is founded on rumor, and not such as to bias or prejudice the mind of the juror, he may be sworn.

SEC. 152. All challenges for cause may be tried by the court on the oath of the person challenged, or by triers on other evidence, and such challenges shall be made before the juror is sworn.

SEC. 153. If the cause of challenge be discovered after a juror is sworn, and before any part of the evidence is delivered, he may be discharged, or not, in the discretion of the court.

SEC. 154. No indictment for a felony shall be tried, unless the defendant be personally present during the trial; nor shall any person indicted for an offence less than felony, be tried unless he be present at the trial, either personally or by his counsel.

SEC. 155. Every person indicted shall be allowed to make any lawful proof, by competent witnesses or other testimony, which may be necessary for his defence.

SEC. 156. The proceedings prescribed by law, in civil cases, in respect to empanelling jurors, the keeping of them together, and the manner of rendering their verdict, shall be had upon trials of indictments and prosecutions for criminal offences, except in cases otherwise provided by this act.

SEC. 157. All the provisions of law in civil cases in relation to compelling the attendance of witnesses, their examination, and the administration of oaths, and proceedings as for contempts to enforce the remedies, shall extend to criminal cases so far as they are applicable thereto.

SEC. 158. Verdicts may be set aside, and new trials awarded, on the application of the defendant; and motions therefor shall be made

within the same time, and continuances may be granted to either party, in criminal cases, for like causes, and under like circumstances, as in civil cases.

SEC. 159. The attorney for the State shall not be required, in order to obtain a continuance of a criminal case, to make an affidavit to the causes for continuance; his official statement in writing shall be sufficient.

SEC. 160. All indictments where the defendant is in custody, or under recognizance for his appearance to answer such indictment, or where the defendant shall be arrested during the term, shall be tried at the term of the court at which they are found, unless for good cause shown.

SEC. 161. In trials for treason, no evidence shall be given of an overt act that is not expressly laid in the indictment, and no conviction shall be had, unless one or more overt acts be alleged therein.

SEC. 162. In trials of indictments for conspiracy, in cases where an overt act is required by law to consummate the offence, no conviction shall be had, unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but overt acts other than those alleged in the indictment, may be given in evidence on the part of the prosecution.

SEC. 163. Proof of actual penetration into the body, shall be sufficient to sustain an indictment for a rape, or for the crime against nature.

SEC. 164. If on the trial of any indictment or other proceeding in a criminal cause, the existence, constitution or powers of any banking company shall become material, or be in any manner drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the State by which such corporation was created.

SEC. 165. On the trial of any indictment for counterfeiting any bill or note of any bank of this State, or of the United States, or of any other State or Territory of the United States, the attorney for the State shall not be required to produce, on the trial, an authenticated copy of the charter of the bank, but the same may be established in the manner prescribed in the preceding section.

SEC. 166. No person shall be rendered incompetent to testify in criminal cases, by reason of his being the person injured, or defrauded, or intended to be injured or defrauded, or because he would be entitled

to satisfaction for the injury, or may be liable to pay the costs of prosecution.

SEC. 167. When two or more defendants are jointly indicted for any criminal offence, any defendant requiring it may be tried separately, and the attorney for the State may sever the trial of joint defendants when he may deem it proper.

SEC. 168. On the trial of any indictment or prosecution for a criminal offence, exceptions to any decision of the court may be made, in the same cases and manner as provided in civil cases; and bills of exceptions shall be settled, signed, and filed, as allowed by law in civil cases; and the same proceedings may be had to compel the signing and return of any bill of exceptions, as in such cases.

SEC. 169. If any person indicted for any offence, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offence, which shall be held after the finding of such indictment, he shall be discharged so far as relates to the offence for which he was committed, unless the delay shall happen on the application of the prisoner.

SEC. 170. If any person indicted for any offence, and held to bail, shall not be brought to trial before the end of the third term of the court in which such indictment is pending, which shall be held after the finding of such indictment, and such holding to bail on such indictment, he shall be discharged, so far as relates to such offence, unless the delay happened on his application.

SEC. 171. Nothing in the two preceding sections shall be so construed, as to discharge any person who may have been indicted for any criminal offence, on account of the failure of the judge to hold any term of the court, or for the want of time to try such person at any term of the court.

SEC. 172. If when application is made for the discharge of any defendant, under either of the three preceding sections, the court shall be satisfied that there is material evidence on the part of the State which cannot be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeding term, the cause may be continued to the next term, and the prisoner remanded or admitted to bail, as the case may require.

SEC. 173. The court shall not, on the trial of any indictment, sum up or comment on the evidence, or charge the jury as to matter of fact; but may, at the request of the attorney for the State, or the

defendant, or his counsel, recapitulate the evidence given, and may instruct the jury on any point of law arising in the cause.

SEC. 174. When an indictment charges an offence against the property of another, by robbery, larceny, fraud, embezzlement, or the like, the jury on conviction shall ascertain and declare in the verdict, the value of the property taken, embezzled, or received, and the amount restored, if any, and the value thereof.

SEC. 175. In all cases of a verdict of conviction, for any offence, where by law there is an alternative or discretion in regard to the kind or extent of the punishment to be inflicted, the jury may assess and declare the punishment in their verdict, and the court shall render a judgment according to such verdict, except as hereinafter provided.

SEC. 176. When a jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment in their verdict, or if they assess a punishment not authorized by law, and in all cases of a judgment on confession, the court shall assess and declare the punishment, and render judgment accordingly.

SEC. 177. If the jury in any case, assess a greater punishment, whether of fine or imprisonment, than the highest limit declared by law for the offence for which they convict the defendant, the court shall disregard the excess, and enter judgment and pronounce sentence according to the highest limit prescribed by law in the particular case.

SEC. 178. If the jury, in any case, assess a punishment, whether of fine or imprisonment, below the limit prescribed by law for the offence of which the defendant is convicted, the court shall render judgment, and pronounce sentence, according to the lowest limit prescribed by law in such cases.

SEC. 179. The court shall have power, in all cases of conviction, to reduce the extent or duration of the punishment assessed by a jury, if, in the opinion of the court, the conviction is proper, and the punishment assessed is greater than, under the circumstances of the case, ought to be inflicted, so that the punishment be not, in any case, reduced below the limit prescribed by law in such cases.

SEC. 180. The court before which any person may be convicted of any criminal offence not punishable with death, shall have power, in addition to the sentence prescribed or authorized by law, to require such person to give security to keep the peace, or be of good behavior, or both, for any term not exceeding three years from the time he may be discharged from prison, if imprisonment be a part of the punishment.

SEC. 181. If such person shall fail to give security as required in the preceding section, he shall be committed to prison, there to remain until such security be given.

SEC. 182. No recognizance given under the provisions of the one hundred and eightieth section of this act, shall be deemed to be broken, unless the principal therein be convicted of some offence, amounting, in judgment of law, to a breach of the recognizance.

SEC. 183. Whenever a judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully on the minutes, stating briefly the offence for which such conviction shall have been had; and the court shall inspect such entries, and conform them to the facts.

SEC. 184. Whenever a sentence of imprisonment is pronounced upon any person convicted of any offence, the clerk of the court shall, as soon as may be, make and deliver to the sheriff of the county a transcript of the entry of such conviction, and of the sentence thereupon, duly certified, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

SEC. 185. Whenever any convict shall be sentenced with the punishment of death, the court shall cause to be made out and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than ten, nor more than thirty days from the time when sentence was passed.

SEC. 186. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time, or suspend the execution of any convict sentenced to be punished with death, for a limited time; and no other officer shall have such authority, except in the cases and in the manner hereinafter provided.

SEC. 187. If, after any convict be sentenced to be punished with death, the sheriff shall have cause to believe that such convict has become insane, he may summon a jury of twelve competent jurors, to inquire into such insanity, giving reasonable notice thereof to the attorney for the state.

SEC. 188. The attorney for the State shall attend such inquiry, and may produce witnesses before the jury, and may cause subpœnas to be issued by a justice of the peace for that purpose; and disobedience thereto may be punished by the circuit court, as in other like cases.

SEC. 189. The inquisition of the jury shall be signed by them and

by the sheriff; and if it be found that such convict is insane, the sheriff shall suspend the execution of the sentence until he receive a warrant from the governor or the circuit court, as hereinafter authorized, directing the execution of such convict.

SEC. 190. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such convict, issue a warrant appointing a time for the execution of such convict, pursuant to sentence.

SEC. 191. If, after any female convict shall be sentenced with the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall in like manner summon a jury of six persons, part of whom shall be physicians, and shall give notice thereof to the attorney for the State, and the same proceedings shall be had as in the preceding section in relation to insanity.

SEC. 192. The inquisition shall be signed by the jury and the sheriff; and if it appear that such female convict is quick with child, the sheriff shall in like manner suspend the execution of such sentence, and transmit the inquisition to the governor.

SEC. 193. Whenever the governor shall be satisfied that the cause of such suspension no longer exists, he shall issue his warrant, appointing a day for the execution of such convict, pursuant to her sentence; or he may, at his discretion, commute her punishment.

SEC. 194. Whenever, for any cause, the sentence of any convict shall not have been executed pursuant to such sentence, and the same shall stand in full force, the circuit court of the county in which the conviction was had, on the application of the attorney for the State, shall issue a writ of habeas corpus, to bring such convict before the court; or, if such convict be at large, a warrant for his apprehension may be issued by such court, or the judge thereof.

SEC. 195. Upon such convict being brought before the court, such court shall proceed to inquire into the facts; and if no legal reason exists against the execution of such sentence, such court shall issue a warrant to the sheriff, commanding him to execute such sentence, at such time as shall be appointed therein, which shall be obeyed by the sheriff.

SEC. 196. The punishment of death shall in all cases be inflicted by hanging by the neck until the convict be dead.

SEC. 197. The costs, in all cases of conviction where the convict may be sentenced to suffer death, and all expenses attending the execution of such sentence, shall be adjusted and taxed by the court, and

paid out of the estate of the convict, and execution may be issued against the estate of the convict therefor.

SEC. 198. Where two or more defendants are joined in one indictment, and shall sever in the trial, the costs which shall have accrued before the severance shall be adjudged against such of the defendants as may have been convicted; and the costs thereafter accruing shall be apportioned and adjudged accordingly.

SEC. 199. When any defendant shall, on conviction, be imprisoned to pay a fine, he shall be imprisoned until the sentence is fully complied with, and all costs paid, unless he be sooner discharged, in the manner hereinafter provided.

SEC. 200. When any prisoner is held in custody or imprisonment, for a fine imposed on a conviction of a criminal offence, as specified in the preceding section, the court in which the cause was tried, or the judge thereof in vacation, on the petition of the prisoner for that purpose, and such court or judge being satisfied that such prisoner is unable to pay the fine imposed, shall sentence him to imprisonment for a limited time, in lieu of such fine; and at the expiration of such time, the prisoner shall be discharged on payment of the costs, as hereinafter provided.

SEC. 201. Whenever any person shall be detained for the costs of a criminal prosecution, or for a fine imposed, he shall be permitted to take the benefit of the laws for the relief of insolvent debtors, on making application for that purpose, and conforming to the provisions of such laws.

SEC. 202. The property both real and personal, of any person charged with a criminal offence, shall be bound from the time of his arrest, or the finding of an indictment against him, (whichever shall first happen,) for the payment of all fines and costs, which he may be adjudged to pay.

SEC. 203. It shall be the duty of the clerk of the circuit court, at the end of each term, to issue executions for all fines imposed, and the costs of conviction in criminal cases during the term, and remaining unpaid, which shall be executed in the same manner as executions in civil cases; and the property of the defendant may be seized and sold, notwithstanding he may be in custody for the same demand.

SEC. 204. All fines that may be imposed on convictions for any crimes or misdemeanors, and all fines imposed in any other case, unless otherwise expressly appropriated, shall be paid into the county treasury of the county in which the indictment was found or fine imposed.

SEC. 205. In all criminal or penal cases, if the defendant shall be acquitted, (except in cases where the prosecutor shall be adjudged to pay the costs,) or, if convicted, shall not have property to pay the costs, the same shall be paid by the county.

SEC. 206. The county shall not be liable for costs when the defendant is convicted, until execution shall have been issued against the property of such convict, and returned unsatisfied, for the want of property to satisfy the same; unless the court in which the trial was had, shall certify, that in the opinion of such court, the costs cannot be made out of the property of the defendant.

SEC. 207. In all cases where the county shall be liable to pay the costs and expenses in criminal cases, the circuit court for the county in which the case was tried, shall adjust the same, and cause the same to be certified to the county court.

SEC. 208. All demands so certified against any county, shall be allowed by the county court, as other liquidated demands against the county.

SEC. 209. If a slave should be convicted of any offence, in any case when, if the convict was a free person, he would be liable to pay costs, such slave shall be sold to satisfy such costs, unless the owner or master appear and pay the same, within fifteen days after they become due.

SEC. 210. The sheriff having the custody of such slave, shall detain him, and, if the costs be not paid within the time specified in the preceding section, shall proceed to sell such slave, giving ten days' notice of the time and place of sale; and the proceeds of such sale shall be applied, first to the payment of the costs and expenses of sale, and the balance, if any, shall be paid to the owner of such slave, on demand.

SEC. 211. Any slave convicted of a capital offence, who shall be reprieved or pardoned by the governor, shall be sold to satisfy the costs, unless the owner or master appear and pay the same, according to the provisions of the preceding sections.

SEC. 212. If a slave be convicted of any capital offence, and shall be executed, the costs shall be paid by the county in which such conviction was had.

SEC. 213. In all cases of final judgment rendered, upon any indictment, an appeal to the supreme court shall be allowed, if applied for at the term at which such judgment may be rendered.

SEC. 214. Writs of error, on application therefor, shall issue of

course in vacation as well as in term time, out of the supreme court, on final judgment in criminal matters.

SEC. 215. No such appeal or writ of error shall stay or delay the execution of such judgment or sentence thereon; unless the supreme court or a judge thereof in vacation, or the circuit court in which the judgment was rendered, on inspection of the record, shall be of opinion that there is probable cause for such appeal or writ of error, or so much doubt as to render it expedient to take the judgment of the supreme court thereon, and shall make an order expressly directing that such appeal or writ of error shall operate as a stay of proceeding on the judgment.

SEC. 216. If the circuit court shall refuse to grant such order, the execution of the judgment shall, nevertheless, be suspended except as to fine and costs, if necessary to attain sufficient time to make application to the supreme court or a judge thereof, for such order.

SEC. 217. When such order to stay proceedings shall be made by the supreme court, or a judge thereof in vacation, the same, together with the writ of error, if any, shall be filed with the clerk of the court in which the judgment was rendered, who shall furnish the party filing the same, with a certificate thereof, together with a copy of the order.

SEC. 218. If the defendant in the judgment so ordered to be stayed shall be in custody, it shall be the duty of the sheriff, if the order was made by the court rendering the judgment, or upon being served with the clerk's certificate and a copy of the order, to keep the defendant in his custody, without executing the sentence which may have been passed, to abide such judgment as may be rendered upon the appeal or writ of error.

SEC. 219. In all cases where an appeal or writ of error is prosecuted from a judgment in any criminal cause, except where the defendant is under the sentence of death, the circuit court, or judge thereof in vacation, may issue a writ of habeas corpus to bring up the defendant, and may thereupon let him to bail, upon a recognizance with sufficient securities, to be approved by the court or judge.

SEC. 220. The recognizance shall be conditioned that the defendant shall appear in the supreme court, at the next term thereof, to receive judgment on the appeal or writ of error, and in the court where the trial on the indictment may have been had, at such time as the supreme court shall direct, and that he will render himself in execution, and obey every order and judgment which shall be made in the premises.

SEC. 221. When any appeal shall be taken or writ of error filed, which shall operate as a stay of proceedings, it shall be the duty of the clerk of the circuit court, to make out a full transcript of the record in the cause, including the bill of exceptions, judgment and sentence, and certify and return the same to the office of the clerk of the supreme court, without delay.

SEC. 222. When the appeal or writ of error does not operate as a stay of proceedings, such transcript shall be made out, certified and returned, on the application of the appellant or plaintiff in error, as in civil cases.

SEC. 223. No assignment of errors or joinder therein shall be necessary upon an appeal or writ of error in criminal cases, issued or taken pursuant to this act; but the court shall proceed on the return thereof, without delay, and render judgment upon the record before them.

SEC. 224. If the supreme court shall affirm the judgment of the circuit court, the sentence pronounced by such court shall be directed to be carried into execution, and the same shall be executed accordingly.

SEC. 225. If the judgment of the circuit court be reversed, the supreme court shall direct a new trial, or that the defendant be absolutely discharged, according to the circumstances of the case.

SEC. 226. If the defendant shall have been let to bail, after the appeal or writ of error, as herein provided, and shall fail to appear and receive judgment on such appeal or writ of error, or at any new trial that may be ordered, the supreme court, or the court in which such new trial shall be directed, or any judge of either court, shall cause such defendant to be arrested, upon process to be issued for that purpose.

SEC. 227. The circuit court to which any cause shall be remanded for new trial, shall proceed therein in the same manner as if such cause had not been removed into the supreme court.

SEC. 228. When property alleged to have been stolen, shall have come into the possession of any sheriff, constable, or any other person authorized to perform the duties of such officer, he shall hold the same subject to the order of the officer hereinafter authorized to direct the disposition thereof.

SEC. 229. Upon receiving satisfactory evidence of the ownership of such property, the magistrate who shall take the examination of the person accused of stealing such property, may order the same to be

delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

SEC. 230. If stolen property come into the hands of a justice of the peace or other magistrate, upon satisfactory proof of the ownership thereof, it shall be delivered to the owner, on the payment of the necessary expenses incurred in the preservation thereof, to be certified by the magistrate.

SEC. 231. If the property stolen shall not have been delivered to the owner thereof, the court before which a conviction shall be had for stealing such property, may, on proof of the ownership, order the same to be restored to the owner, on payment of the expenses incurred in the preservation thereof.

SEC. 232. If stolen property shall not be claimed by the owner within six months from the time any person may have been convicted for stealing the same, the court or magistrate authorized by the preceding provisions, to order a restoration may order the same to be sold; and the proceeds of the sale, after payment of the expenses of the preservation and sale of such property, shall be paid into the county treasury, for the use of the county.

SEC. 233. If the thing stolen be a living animal, or property of a perishable nature, the court or magistrate authorized to order a restitution, may order a sale thereof; and the proceeds shall be applied in the same manner as herein before directed in respect to such stolen property.

SEC. 234. In all cases of sale as specified in the preceding section, a particular description of the property shall be made out in writing, and filed with the court or magistrate making the order of sale, so that the owner may be enabled to identify the same, if he shall claim the proceeds within the time before limited for making his claim.

SEC. 235. Warrants authorized by law to be issued in any criminal case, may be under the hand of the magistrate issuing the same, and shall be as valid and effectual, in all respects, as if sealed.

SEC. 236. All recognizances required or authorized to be taken in any criminal proceeding, in open court, by any court of record, shall be entered on the minutes of such court, and the substance thereof shall be read to the person recognized.

SEC. 237. Every officer or other person, who shall have arrested, or have in his custody, under the authority of the laws of this State,

any prisoner who is to be conveyed from one county to another, may carry such prisoner through such parts of any county as shall be in the ordinary route of travel, from the place where such prisoner shall have been arrested to the place where he is to be conveyed and delivered, under the process or authority by which such person shall have been arrested, or is detained.

SEC. 238. The officer or person having such prisoner in charge, shall not be liable to arrest on his route; and he shall have the like power to require any person to aid in securing such prisoner, and retaking him if he escape, as sheriffs or other officers have in their respective counties; and a refusal or neglect to render such aid shall be an offence punishable in the same manner as for disobedience to a summons to assist in the execution of process.

SEC. 239. The jailer of any county through which any prisoner may be taken, is required to receive and safely keep such prisoner, in the jail of which he has the charge, when thereto requested by the officer or person having lawful charge of such prisoner, and to redeliver him on the demand of such officer or person.

SEC. 240. Whenever the governor of this State shall demand any fugitive from justice from the executive of another State, or Territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the State, to some messenger, commanding him to receive and convey such fugitive to the sheriff of the county in which the offence was committed or is by law cognizable.

SEC. 241. The expenses which may accrue under the provisions of the preceding section, being ascertained to the satisfaction of the governor, shall on his certificate be allowed and paid out of the treasury, as other demands against the State.

SEC. 242. In all cases in which the governor is authorized by the constitution of the State to grant pardons for any offence punishable with death, or imprisonment for six months and over, or with corporal punishment, he may grant the same with such condition, and under such restrictions as he may think proper; and he shall have power to commute the punishment of persons under the sentence of imprisonment of six months and over, or corporal punishment, by substituting banishment in lieu of the sentence of the court.

SEC. 243. In all cases where any person convicted of a criminal offence, and shall be sentenced to imprisonment, or other infamous punishment, if such convict shall agree, as a condition of his pardon,

to leave the State and never again return to it, the governor may pardon him on such conditions; and if such convict should at any time after the granting of such pardon be found within this State, the sentence passed on him by the court shall be executed in the same manner as if no such pardon had been granted.

SEC. 244. Any person who shall apprehend any criminal within the bounds of this State, who may have been pardoned on the condition of his leaving the State and not again returning to it, and shall deliver such criminal to the proper officer of the county in which he was convicted, shall be entitled to receive a reward of two hundred dollars, to be paid out of the State treasury, on the certificate of the governor.

SEC. 245. Before the governor issues his certificate for any reward under the provisions of the preceding section, he shall be satisfied that such criminal was apprehended within the limits of this State, and that he was delivered to the proper officer.

SEC. 246. Upon the receipt of any such criminal by the sheriff or jailer of the proper county, it shall be his duty to give the person from whom he received such criminal, a receipt for his delivery; and he shall commit him to jail, and there keep him until he shall have fully satisfied the sentence of the court, if such sentence was imprisonment.

SEC. 247. The time that any criminal may have remained in prison prior to his pardon, shall not be computed as any part of the sentence.

SEC. 248. If the sentence passed on any such criminal shall have been corporal punishment, the sheriff shall immediately inflict the same, in the same manner as if such criminal had not been pardoned.

SEC. 249. Every person pardoned for a criminal offence on condition of his leaving the State, shall be allowed ten days after his release to leave the State; and during that time he shall not be arrested under the preceding provisions of this act in relation to conditional pardons.

SEC. 250. Any person may be prosecuted, tried and punished, for any offence punishable with death, at any time after the offence may have been committed.

SEC. 251. No person shall be prosecuted, tried and punished, for any felony other than is herein before or after specified, unless an indictment be found within three years after the commission of the offence.

SEC. 252. No person shall be tried, prosecuted and punished, for any offence less than felony, or any fine or forfeiture, unless the indict-

ment be found or a prosecution instituted within one year after the commission of the offence, or incurring the fine or forfeiture.

SEC. 253. Nothing in the two preceding sections shall avail any person who shall flee from justice; and in all cases the time during which any defendant shall not have been a resident of this State, shall not constitute any part of the limitation prescribed in the preceding sections.

SEC. 254. When any indictment or prosecution shall be quashed, set aside, or reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offence.

SEC. 255. Every person who shall steal or obtain by robbery the property of another, in any other State or country, whether the same be within the jurisdictional limits of the United States or not, and shall bring the same within this State, may be indicted, tried and punished for larceny, in the same manner as if such property had been feloniously stolen or taken within this State; and in any such case the larceny may be charged to have been committed in any county into or through which such stolen property may have been taken.

SEC. 256. Every person prosecuted under the provisions of the preceding section, may plead a former conviction or acquittal for the same offence in another State or country; and if such plea be admitted or established, it shall be a bar to any other or further proceedings against such person for the same matter.

SEC. 257. When any person shall be convicted of two or more offences before sentence shall have been pronounced upon him for either offence, the imprisonment to which he shall be sentenced upon the second or other subsequent offence, shall commence at the termination of the term of imprisonment to which he shall be adjudged on the prior convictions.

SEC. 258. Upon the conviction of any offence to which no length of imprisonment is prescribed by law, a fine may be imposed on the offender not exceeding two hundred dollars.

SEC. 259. When a defendant shall have been acquitted of a criminal charge, upon a trial, on the ground of a variance between the indictment and proof, or upon any exception to the form or substance of the indictment, he may be tried and convicted on a subsequent indictment for the same offence.

SEC. 260. When a defendant shall be acquitted on the trial of the merits and facts of the case, and not on the ground stated in the pre-

ceding section, he may plead such acquittal in bar to any subsequent accusation for the same offence, notwithstanding the indictment upon which such acquittal was had may have been defective in form and substance.

SEC. 261. The person of the convict sentenced to imprisonment is under the protection of the law, and any injury to his person not authorized by law, shall be punished in the same manner as if he were not under sentence, or were not convicted.

SEC. 262. No conviction of any person shall work corruption of blood, or any forfeiture of estate, or of any right or interest therein; and all forfeitures in case of suicide or death by casualty, or where any person shall flee from justice, are abolished.

SEC. 263. The benefit of clergy in criminal cases, and appeals of felony, are hereby abolished.

SEC. 264. In no case shall the right of action of any party injured by the commission of a felony, be deemed or adjudged to be merged in such felony, but damages sustained thereby may be recovered in an action brought for that purpose.

SEC. 265. The term "magistrate," as used in this act, shall include all persons or officers authorized to issue criminal process.

[Approved February 13, and in force from and after March 1, 1838.]

CHAPTER 46.

DEATH PRESUMED.

SECTION
1. Death presumed by five years absence from the State, without proof to the contrary.

SECTION
2. An estate recovered where death presumed, when restored.

SEC. 1. Any person absenting himself beyond the limits of this State for five years successively, shall be presumed to be dead in any case in which his death may come in question, unless proof be made that he was alive within that time.

SEC. 2. An estate recovered in any case in which the death of the person having right thereto shall have been presumed, shall be restored to such person on making his personal appearance, or on making

satisfactory proof of his being in full life, and he may recover the rents and profits of the estate during the time he may have been deprived thereof, with interest.

[Approved: November 25, 1837.]

CHAPTER 47.

DEFAULTERS.

SECTION

1. Who are, and to what offices not eligible.
2. County treasurer to certify to clerk of county a list of persons indebted to the county, and at what time.
3. Clerk to certify to governor whether each person elected be a defaulter.
4. Auditor to furnish to governor a list of defaulters to State, and when.
5. Duty of governor as to withholding commission of defaulters.
6. Not to withhold commission from any person who does not appear by such certificates to be a defaulter.
7. Governor to send copies of certificates to General Assembly. If any member be so found a defaulter, his seat to be vacated.
8. Any person elected by General Assembly, and a defaulter, duty of governor.
9. Penalty for failure of any officer to perform duties required by this act.

SEC. 1. No person who now is or shall be hereafter a collector or holder of public money in this State, shall be eligible to a seat in either house of the General Assembly, or to any office of trust or profit in this State, until he shall have accounted for and paid over all sums for which he may be liable.

SEC. 2. It shall be the duty of the county treasurer of each county in this State, within ten days after each election for members of the General Assembly and other civil officers, to make out and certify to the clerk of the circuit court of his county, a true and perfect list or statement of the names of all persons indebted to the county and the amount charged to each person.

SEC. 3. It shall be the duty of the clerk of the circuit court in each county to certify to the governor, on each abstract or certificate of election he may be required to make, whether the person whose election he is certifying is a defaulter to the county, and if so, for what amount.

SEC. 4. It shall be the duty of the auditor of public accounts, within ten days after each election for members of the General Assembly and other civil officers, to furnish the governor a certified list or

statement of the names of all persons indebted to the State, and the amount charged to each person.

SEC. 5. If it shall appear to the governor from the certificates furnished him as aforesaid, that any person returned elected to the office of clerk, sheriff, coroner, county treasurer, county surveyor, or justice of the peace for any county, is a defaulter to the State or county, he shall withhold the commission of such person until the first day of December thereafter; and if such person shall fail to present to the governor a certificate from the proper officer, of his discharge from his liability to the State or county, such office shall be deemed vacant.

SEC. 6. The provisions of the preceding section shall not be so construed as to authorize the governor to withhold the commission from any person elected to any of the offices before mentioned, who does not appear by such certificates to be a defaulter.

SEC. 7. It shall be the duty of the governor immediately after the commencement of each regular session of the General Assembly, to cause copies of such certificates to be transmitted to each house of the General Assembly; and if it shall appear from such certificates that any person elected a member of either house of the General Assembly is a defaulter to the State or any county, his seat shall be declared vacant, unless he shall forthwith produce a certificate of his discharge from such liability.

SEC. 8. If any person shall be elected to any office of trust or profit by the joint vote of both houses of the General Assembly, who from such certificates shall appear to be a defaulter either to the State or any county, it shall be the duty of the governor to withhold the commission or credential from such person, and forthwith report the fact to the General Assembly.

SEC. 9. If the auditor of public accounts, or any clerk or county treasurer shall neglect or refuse to perform any of the duties prescribed in this act, or shall make a false return, he shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly.

[Approved: November 29, 1837.]

CHAPTER 48.

DEPOSITIONS.

SECTION
1. May be taken in any suit, to be used conditionally.
2. Where witness resides out of the State, the court, or clerk in vacation, may grant the rule to take his testimony to be read in evidence.
3. Commission to issue.
4. Form of commission.
5. Where witness resides within the State.
6. Notice to be given to adverse party or his attorney of record.
7. Where neither the party nor his attorney of record reside in the State, how notice shall be given.
8. At what time notice shall be given.
9. Leave to take depositions, how granted in term time.
10. To whom in such case directed, and to take depositions on interrogatories.
11. Interrogatories, how drawn up, &c.
12. Form of such commission, and manner of examination.
13. Witness sworn, and examination reduced to writing.
14. Power of person taking depositions to obtain attendance of witnesses, and under what penalties.
15. Certificate to be appended.
16. Official character of person before whom taken, how proved and authenticated.
17. How, when beyond the United States.
18. How forwarded, &c., and to whom.
19. In what cases such depositions may be read.
20. Statement of officer taking depositions as to residence of witness, *prima facie* evidence of such residence.
21. Objections to competency and credibility of witnesses, and to the competency or relevancy of questions or answers, how taken.

SEC. 1. Any party to a suit pending in any court of record in this State, may obtain the deposition of any witness, to be used in such suit conditionally.

SEC. 2. When a witness resides out of this State, the party desiring his testimony may apply to the court in which the suit is pending, or to the clerk thereof, in vacation, for a rule to take the deposition of such witness, before any judge or justice of the peace of any of the United States, or the Territories thereof, to be read in evidence on the trial of the cause.

SEC. 3. Upon the entering of such rule, the clerk of the court, in which such suit is pending, shall issue a commission under the seal of the court, and direct the same to any judge or justice of the peace, within the government where the witness resides.

SEC. 4. The commission shall authorize such officer to cause to come before him such person or persons as may be named to him by the party suing out the same, and shall command such officer to exam-

ine such person touching his knowledge of anything having relation to the matter in controversy, and to reduce such examination to writing and return the same annexed to the commission, to the court wherein the action is pending.

SEC. 5. When the witness resides in this State, a rule may be entered, as prescribed in the second section of this act, to take the deposition of such witness, before any judge, justice of the peace, or master in chancery thereof, and a commission shall be issued in like manner as if the witness was a non-resident of this State.

SEC. 6. In all cases where depositions shall be taken, by virtue of any of the preceding sections of this act, the party at whose instance the same may be taken, shall cause notice in writing, of the time and place of taking such depositions, to be served on the adverse party, if he reside in the county in which the suit is pending, and if not, then on his attorney of record in the cause.

SEC. 7. If neither the adverse party, nor his attorney of record, reside in the county where the suit is pending, the putting of such notice in the office of the clerk of such court, shall be a sufficient notice.

SEC. 8. In all cases where notice is required to be served on the adverse party or his attorney, prior to the taking of depositions, the same shall be served at least three days before the taking of such depositions, and one day additional for every twenty miles of distance from the place of serving or setting up such notices, to the place of taking the depositions.

SEC. 9. When any party to a suit pending in any court of record in this State, shall make application to such court in term time, for a commission to take the examination of witnesses, and shall support such application by an affidavit of the materiality of such witness, and shall have given the adverse party or his attorney notice of such application, the court may, upon such terms as may be deemed proper, award such commission.

SEC. 10. Such commission shall be directed to such person as the court shall appoint, to be named in the commission, or to any judicial officer of the government in which the witness may reside, commanding such person, or officer, to examine such witnesses as may be named, upon interrogatories.

SEC. 11. The interrogatories shall be annexed to the commission, and shall be drawn up and signed by the parties or their attorneys in the cause, under the sanction and direction of the court, and if either

party shall refuse to join in the interrogatories, such refusal shall not prevent the issuing of the commission.

SEC. 12. Such commission shall command the person or officer, to whom it may be directed, to reduce the examination of the witnesses, and their answers to the interrogatories annexed, to writing, and return the same with the commission, to the proper court, with all convenient speed ; and the person or officer shall examine the witnesses named in the commission, touching the matters contained in the interrogatories annexed and none others, at any time and place when and where such witnesses may be found.

SEC. 13. Every witness examined in pursuance of this act, shall be sworn to testify the whole truth, and his examination shall be reduced to writing, in the presence of the person or officer before whom the same shall be taken.

SEC. 14. Every person, judge, justice of the peace, or master in chancery, in this State, required to take depositions, or examinations of witnesses in pursuance of this act, or by virtue of any commission issued out of any court of record of this or any other government, shall have power to issue subpœnas for witnesses to appear and testify, and to compel their attendance in the same manner and under the like penalties as any court of record of this State.

SEC. 15. To every deposition or examination under the provisions of this act, shall be appended the certificate of the person or officer, by or before whom the same shall have been taken, showing that the deposition or examination was sworn to and subscribed by the witness, and the day on which it was done.

SEC. 16. The official character of any judge, justice of the peace, or other judicial officer before whom any deposition may be taken, by virtue of any commission issued under the provisions of this act, within any of the United States, or Territories thereof, authenticated and proved by the certificate and seal of the clerk of any court of record within any county of the State or Territory, where such officer resides, and certifying that such officer was an acting judge or justice of the peace, and duly commissioned as such at the time when the depositions were taken, shall be a sufficient authentication, but no such certificate shall be required to the official character of the officer before whom depositions may be taken within this State.

SEC. 17. The official character of any such officer taking depositions without the limits of the United States, by virtue of any commission issued in pursuance of this act, shall be attested by the seal of

state of the government in which the depositions or examinations were taken.

SEC. 18. Depositions or examinations taken by virtue of any of the provisions of this act, and all exhibits produced to the person or officer taking such depositions or examinations and proved or referred to by any witness, together with the commission and interrogatories, (if any,) shall be enclosed, sealed up, and directed to the clerk of the court where the action is pending, and endorsed thereon, "Depositions," in the proper cause.

SEC. 19. Depositions and examinations taken and returned in conformity to the provisions of this act, may be read and used as evidence in the cause in which they may have been taken, as if the witnesses were present and examined in open court, on the trial of such cause; first, if the witness reside or has gone out of the State; second, if he be dead; third, if by reason of age, sickness or bodily infirmity he be unable, and cannot safely attendthe court; fourth, if he reside without the county; fifth, if he be gone at a greater distance than sixty miles from the place of trial, without the consent or collusion of the party requiring his testimony.

SEC. 20. When the officer taking the depositions by virtue of this act, shall, in his certificate, state the place of residence of the witness, such statement shall be *prima facia* evidence of the facts.

SEC. 21. Every objection to the competency or credibility of a witness examined, or to the competency or relevancy of any question put to him, or of any answer given by him, may be made in the same manner and with like effect as if such witness were personally examined at the trial.

[Approved: December 13, 1837.]

CHAPTER 49.

DESCENTS AND DISTRIBUTIONS.

SECTION
1. General law of descent.
2. Posthumous children, how to inherit.
3. Illegitimate children to inherit and transmit on part of mother.
4. How legitimatized by subsequent intermarriage.
5. Issue of marriages null in law or dissolved by divorce, legitimate.

SECTION
6. No bar that ancestor was alien.
7. No kindred to inherit, whole to go to wife or husband. No wife or husband, estate to escheat.
8. Some children living and some dead, to take per *stripes*.
9. This rule to apply in every case where those entitled to inherit are in equal degrees of consanguinity to intestate.
10. If there be no descendants, rules of descent; 1st, where estate comes by father; 2d, by mother; and 3d, where a new acquisition.
11. Estate how to go, where no father or mother.
12. Those of half blood, how to inherit.
13. In cases not herein provided for, descent to be according to common law.

SECTION
14. All who inherit, to do so as tenants in common.

ADVANCEMENT.
15. By settlement or portion to child, how reckoned, and effect of.
16. When not equal to share of estate.
17. Value of such advancement, how ascertained.
18. Maintenance, education, &c. not to be taken as advancement.

CONSTRUCTION.
19. Of term "real estate."
20. "inheritance."
21. Where person described "as living."
22. Of expression "come on part of father," or, "on part of mother."

SEC. 1. When any person shall die, having title to any real estate of inheritance, or personal estate, not disposed of, nor otherwise limited by marriage settlement, and shall be intestate as to such estate, it shall descend and be distributed, in parcenery, to his kindred, male and female, subject to the payment of his debts, and the widow's dower, in the following manner: first, to children, or their descendants, in equal parts; second, if there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants, in equal parts; third, if there be no children, nor their descendants, father, mother, brothers or sisters, nor their descendants, then to the grandfather, grandmother, uncles, and aunts, and their descendants, in equal parts; and so on in other cases, without end, passing to the nearest lineal ancestor, and their children and their descendants, in equal parts.

SEC. 2. Posthumous children of the intestate shall inherit in like manner as if born in the life time of the intestate; but no right of inheritance shall accrue to any person other than the children of the intestate, unless they be born at the time of the intestate's death.

SEC. 3. Illegitimate children shall be capable of inheriting and transmitting an inheritance, on the part of their mother, in like manner as if they had been legitimate of their mother.

SEC. 4. If a man have by a woman a child or children, and afterwards shall intermarry with her, and shall recognize such children to be his, they shall be deemed and considered as legitimate.

SEC. 5. The issue of all marriages deemed null in law, or dissolved by divorce, shall be deemed and considered as legitimate.

SEC. 6. In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate, is, or has been, an alien.

SEC. 7. If there be no children, or their descendants, father, mother, nor their descendants, or any paternal or maternal kindred capable of inheriting, the whole shall go to the wife or husband of the intestate. If there be no such wife or husband, then the estate shall go to the State.

SEC. 8. If any of the children of an intestate be living, and some be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as shall have died, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who shall have died leaving issue, had been living, so that the descendants of each child who shall be dead, shall inherit the same their parent would have received if living.

SEC. 9. The rule of descent prescribed in the last preceding section, shall apply in every case where the descendants of the intestate entitled to share in the inheritance, shall be in equal degrees of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them had all the descendants in the same degree, who shall have died leaving issue, been living; so that the issue of the descendants who shall have died, shall respectively take the shares which their parents, if living, would have received.

SEC. 10. In cases where the intestate shall die without descendants, if the estate come by the father, then it shall ascend to the father and his heirs; if by the mother, the estate, or so much thereof as came by the mother, shall ascend to the mother and her heirs; but if the estate be a new acquisition, it shall ascend to the father for his life time, and then descend, in remainder, to the collateral kindred of the intestate, in the manner provided in this act; and in default of a father, then to the mother, for her life time; then to descend to the collateral heirs, as before provided.

SEC. 11. The estate of an intestate, in default of a father and mother, shall go, first, to the brothers and sisters, and their descendants, of the father; next to the brothers and sisters, and their descendants, of the mother. This provision applies only where ther-

are no kindred, either lineal or collateral, who stand in a nearer relation.

SEC. 12. Relations of the half blood shall inherit equally with those of the whole blood in the same degree; and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance come to the intestate by descent, devise, or gift, of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

SEC. 13. In all cases not provided for by this act, the inheritance shall descend according to the course of the common law.

SEC. 14. Whenever an inheritance, or a share of an inheritance, shall descend to several persons under the provisions of this act, they shall inherit as tenants in common, in proportion to their respective shares or rights.

SEC. 15. If any child of an intestate shall have been advanced by him, in his life time, by settlement or portion, of real or personal estate, or both of them, the value thereof shall be reckoned, for the purpose of this section, only as part of the real and personal estate of such intestate descendible to his heirs, and to be distributed to his next of kin according to law; and if such advancement be equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased as herein reckoned, then such child, and his descendants, shall be excluded from any share of the real and personal estate of the intestate.

SEC. 16. In cases where such advancement is not equal to the share that such child or relative, and his descendants, shall be entitled to receive, they shall be entitled to receive so much of the real and personal estate as shall be sufficient to make all the shares of the heirs in such real and personal estate and advancement to be as nearly equal as possible.

SEC. 17. The value of any real or personal estate so advanced, shall be deemed to be that, if any, which was acknowledged by the person receiving the same by any receipt in writing, specifying the value; if no such written evidence exists, then such value shall be estimated according to its value at the time of advancing such money or property.

SEC. 18. The maintaining, educating, or giving money to a child or heir, without a view to a portion or settlement in life, shall not be an advancement within the meaning of this act.

SEC. 19. The term "real estate," as used in this act, shall be construed to include every estate, interest, and right, legal and equitable, in lands, tenements, and hereditaments, except such as are determined or extinguished by the death of the intestate seized or possessed thereof in any manner, other than by lease for years and estate for the life of another person.

SEC. 20. The term "inheritance," as used in this act, shall be understood to mean real estate, as herein defined, descended according to the provisions of this act.

SEC. 21. Whenever, in any part of this act, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent came; and when any person is described as having died, it shall be understood that he died before the intestate.

SEC. 22. The expression used in this act, "where the estate shall have come to the intestate on the part of the father" or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate by gift, devise, or descent, from the parent referred to, or from any relative of the blood of such parent.

[Approved: March 3, 1838.]

CHAPTER 50.

DETINUE.

SECTION
1. When *capias* in detinue may issue.
2. How to be executed, and form of bail bond.
3. When officer may be made co-defendant.
4. Remedy of plaintiff against bail, of bail against principal, and officer when co-defendant, against bail and principal.
5. When bail may be reduced, or bail bond cancelled and common appearance entered.
6. Value of property, or damages, omitted in verdict, court may award an inquiry.

SEC. 1. In actions of detinue where the plaintiff files in the office of the clerk of the circuit court the affidavit of himself or some other creditable person, stating that the property for which the action is brought belongs to him or that he is entitled thereto in the right of his testator or intestate, and the value thereof, and that the defendant unlawfully

detains the same, the clerk shall issue a capias in detinue and endorse thereon the amount sworn to, and direct the officer to whom such writ may be directed to take bail in double that sum.

SEC. 2. The officer charged with the execution of a capias in detinue, shall take the defendant and commit him to jail, unless he enter into bond with sufficient security, conditioned that if judgment be given against him in the action, he will deliver to the plaintiff the property thereby recovered, and pay the damages for its detention and the costs of suit; and such bond shall be returned with the writ.

SEC. 3. If the officer returns the writ executed and has not the defendant according to the command thereof, or if he fails to take a bond and return the same, or if the bond returned is adjudged insufficient at the return term of the writ and the defendant fails to perfect his bond if ruled thereto, the officer shall be made co-defendant, and may defend on the pleas of the defendant, and shall be subject to the same judgment and be joined therein.

SEC. 4. When a bond taken in pursuance of this act is forfeited, the plaintiff shall have the same remedy against the bail and the bail the same remedy against the principal, and the officer when made co-defendant shall have the same remedies against the principal and bail, as may exist by law in cases of bail in other civil cases, and the same proceedings shall be had thereon.

SEC. 5. The court out of which any capias in detinue may be issued, or any judge thereof in vacation, may reduce the sum for which bail is demanded, and the court may accept the appearance of the defendant and cancel the bail bond in such manner, for like cause and with like effect, as in case of bail in other civil actions.

SEC. 6. If in any action of detinue the value of the property recovered, or the damages for the detention thereof be omitted in any verdict for the plaintiff, the court may at any time award an inquiry to ascertain the same.

[Approved: November 29, 1837.]

CHAPTER 51.

DIVORCES.

SECTION
1. For what causes divorces may be granted *a vinculo matrimonii*, as well as *a mensa et thoro*.
2. No divorce in such cases to effect legitimacy of children born before decree.
3. Circuit court in chancery to have jurisdiction in cases of divorce, alimony and maintenance—and what proceedings and process therein. Answer of defendant need not be under oath.
4. Form of affidavit to accompany bill.
5. Proceedings, in what county to be had, and process to run to any county.
6. What residence of party required, and exceptions thereto.
7. Where cause of divorce commenced in another State, and is continued or completed in this, jurisdiction to attach.
8. In what cases no divorce to be allowed.
9. What order to be made for alimony and care of children.
10. Where wife is complainant, court may compel husband to give bond for alimony and maintenance, and in default thereof, collect by execution.
11. Decree or order thereof may be enforced by sequestration or otherwise.
12. Court may make alterations in order for alimony; and allow wife support, pending her bill.
13. Upon divorce *a vinculo*, property which came to husband through wife to revert.

SEC. 1. Where a marriage hath been or shall be hereafter solemnized between two persons, the circuit court of the proper county shall have power to dissolve and set aside such marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes: First, where either party at the time of the contract was and still is impotent; second, where either party wilfully deserts and absents him or herself from the other for the space of one year, without reasonable cause; third, where he or she had a former wife or husband, living, at the time of the marriage sought to be set aside; fourth, where either party shall be convicted of felony or other infamous crime; fifth, where either party shall be addicted to habitual drunkenness for the space of one year, or shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, or shall offer such indignities to the person of the other, as shall render his or her condition intolerable; sixth, where either party shall have committed adultery subsequent to such marriage.

SEC. 2. The injured party in all such cases may apply for such decree of divorce, but no divorce shall affect the legitimacy of the children born previous to entering the decree in such case.

SEC. 3. The circuit court sitting as a court of chancery shall have

jurisdiction in all cases of divorce and alimony, or maintenance, and like process and proceedings shall be had in said cases, as are had in other cases on the equity side of said court, except that the answer of the defendant need not be under oath.

SEC. 4. The bill of the complainant shall be accompanied by his or her affidavit, annexed thereto, stating that the facts set forth in the bill are true so far as stated on the knowledge of complainant and as stated from the information of others he or she believes to be true, and that the complaint is not made out of levity, or by collusion, fear or restraint, between the complainant and defendant, for the mere purpose of being separated from each other, but in sincerity and truth, and for the causes therein set forth.

SEC. 5. The proceedings shall be in the county where the complainant resides, and the process may be directed in the first instance to any county in the State, where the defendant may then reside.

SEC. 6. No person shall be entitled to a divorce from the bonds of matrimony who has not resided in this State one whole year next preceding the filing of the bill, unless the offence or injury complained of was committed in this State, or while one or both of the parties resided in this State.

SEC. 7. In cases in which the cause of divorce has commenced, or shall hereafter commence, beyond the limits of this State, and has been, or shall be continued or completed within this State, the court shall have the same jurisdiction as if the cause had commenced and been completed within this State.

SEC. 8. If it shall appear to the court, that the adultery or other offence complained of shall have been occasioned by the collusion of the parties, or done with an intent to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of the adultery, or such other offence or injury complained of in the bill; then no divorce shall be granted or decreed.

SEC. 9. When a decree shall be entered, the court shall make such order touching the alimony of the wife, and care of the children if there be any, as from the circumstances of the parties, and the nature of the case, shall be reasonable.

SEC. 10. When the wife is complainant, the court may order the defendant to give such security as may be deemed reasonable for alimony and maintenance, and upon his neglect to give the security required of him, or upon default of himself and securities if there be any,

to pay and provide such alimony and maintenance, may award execution for the collection thereof.

SEC. 11. The circuit court shall have power also to enforce the performance of any decree or order for alimony and maintenance, by sequestration of the defendant's property, or that of his securities, or by such other lawful ways and means as are according to the rules and practice of the court.

SEC. 12. The court, upon application of either party, may make such alterations from time to time, as to the allowance of alimony and maintenance, as may be proper, and may order any reasonable sum to be paid for the support of the wife, during the pending of her bill for a divorce.

SEC. 13. When a wife shall obtain a divorce from the bonds of matrimony, all property which came to the husband by means of the marriage, and remained undisposed of at the time of filing the bill, shall revest in and revert to the wife in her own right absolute, and to descend to the heirs of such wife, free from all incumbrance to be done by such husband.

[Approved: December 18, 1837. In force from and after March 10, 1838.]

CHAPTER 52.

DOWER.

SECTION

1. Of what lands widow to be endowed, and of what part thereof.
2. Widow of alien to be endowed.
3. How to be endowed when lands have been exchanged.
4. Widow to be endowed of lands mortgaged, before marriage, except as against mortgagee and those claiming under him.
5. And of lands bought during coverture and mortgaged to secure payment.
6. And when such land is sold under foreclosure after death of husband, widow to be endowed of interest or income of one third of surplus therefrom.
7. Widow not to be endowed of lands taken by husband by way of mortgage, unless he have acquired absolute title therein during coverture.
8. Widow not to be endowed where marriage dissolved for her misconduct.
9. Jointure erected by her assent to be a bar to dower.
10. Assent of wife thereto, how evinced.
11. Pecuniary provision, with her assent, in lieu of dower, to be a bar.
12. When jointure assured, or pecuniary provision made without her assent, she shall make her election.
13. And so when land devised, or provision made by will in lieu of dower.

SECTION
14. When she shall be deemed to have elected to take such jointure, devise or provision.
15. Such jointure, devise or provision, how to be forfeited, and on forfeiture, where to vest.
16. How estates of married woman to pass, and how far her right to dower or jointure, not prejudiced by husband.
17. Widow, how long to tarry in mansion-house, and have sustenance.
18. To tarry in mansion house free of rent till dower assigned.
19. Her dower so to be laid off that dwelling house may be included.
20. Dower of, in slaves and personal estate.
21. Dower where there are no children.
22. How to descend after death of widow.
23. Bequest of real estate and slaves to be considered in lieu of dower.
24. Where provision made by will in lieu of dower, widow to have her election.
25. Bequest to be conveyed by widow electing to be endowed—to whom and how.
26. And such conveyance to be sufficient notice of her election.
27. To be executed within eighteen months, or she will be deemed to have elected the bequest.
28. Widow, to be endowed against creditors, of lands sold in husband's life time, without her consent in legal form.
29. Heir at law to lay off and assign dower and when.
30. Such assignment how to be authenticated, when accepted.
31. How to be done when heir is minor.
32. How widow may proceed when dower not assigned in due time, and form of her petition.
33. Process thereon.
34. Who shall be made defendants.
35. On what service to be heard at first term.
SECTION
36. On what at second term.
37. Petition to be heard without formal pleadings, on petition, answer, exhibits and testimony.
38. Answers must be sworn to.
39. In what cases court to decree dower.
40. Commissioners to be appointed, and their duties.
41. Commissioners to report—which report, if approved, to be recorded, and be conclusive.
42. What order to be made when lands and slaves will not admit of division.
43. How non-residents shall be brought in to answer petition.
44. When lands or slaves are in different counties, petition to be filed in each.
45. Requisites of petition, when defendants reside in different counties.
46. Counterparts in such case to issue.
47. On failure to answer, petition to be taken as confessed.
48. Remedy of widow deforced of lands or slaves assigned her.
49. Remedy of widow where heir aliens land or sells slaves in which she is entitled to dower.
50. Crops of ground held by widow at her death, how to be disposed of.
51. Widow removing or permitting to be removed out of State, slaves held in dower, to forfeit them.
52. By what means she may be at liberty to remove them, and where.
53. Consent of those in reversion, in writing, to supersede security so given.
54. Widow marrying, husband may remove slaves in the same manner.
55. And if he attempt to remove them without such steps taken, they shall be forfeited
56. How heir or those in reversion may prevent removal.
57. How slaves so forfeited may be recovered by the heir or those in reversion.

SEC. 1. A widow shall be endowed of the third part of all the lands whereof her husband was seized, of an estate of inheritance, at

any time during the marriage, unless the same shall have been relinquished in legal form.

SEC. 2. The widow of an alien shall be entitled to dower of the estate of her husband in the same manner as if such alien had been a native born citizen of this State.

SEC. 3. If a husband seized of an estate of inheritance in lands, exchange it for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

SEC. 4. Where a person seized of an estate of inheritance in land, shall have executed a mortgage of such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged as against every person, except the mortgagee, and those claiming under him.

SEC. 5. Where a husband shall purchase lands during coverture, and shall mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower as against all other persons.

SEC. 6. When, in such case, the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power contained in the mortgage, or by virtue of the decree of a court of chancery, and any surplus shall remain after the payment of the moneys due on such mortgage, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one third part of such surplus for her life, as her dower.

SEC. 7. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he have acquired an absolute estate therein during the marriage.

SEC. 8. In case of divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

SEC. 9. When an estate in land shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife

alone, for the purpose of erecting a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim for dower of such wife in any land of the husband.

SEC. 10. The assent of the wife to such jointure shall be evinced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

SEC. 11. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to by such wife, as above provided, be a bar to any right or claim of dower of such wife, in all the lands of her husband.

SEC. 12. If, before her marriage, but without her assent, or if, after her marriage, land shall be given or assured for the jointure of a wife, or a pecuniary provision be made for her in lieu of dower, she shall make her election whether she will take such jointure or pecuniary provision, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both.

SEC. 13. If land be devised to a woman, or a pecuniary or other provision be made for her by will in lieu of her dower, she shall make her election whether she will take the land so devised, or the provision so made, or whether she will be endowed of the lands of her husband.

SEC. 14. When a woman shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure, devise, or pecuniary provision, unless, within one year after the death of her husband, she shall enter on the lands to be assigned to her for her dower, or commence proceedings for the recovery or assignment thereof.

SEC. 15. Every jointure, devise, and pecuniary provision, in lieu of dower, shall be forfeited by the woman for whose benefit it shall be made, in the same cases in which she would forfeit her dower; and upon such forfeiture, any estate so conveyed for jointure, and every pecuniary provision so made, shall immediately vest in the person, or his legal representatives, in whom they would have vested on the determination of her interest therein, by the death of such woman.

SEC. 16. No act, deed, or conveyance, executed or performed by the husband, without the assent of his wife, evinced by the acknowledgment thereof in the manner required by law, shall pass the estate of a married woman; and no judgment or decree confessed or recovered against him, and no laches, default, covin, or crime, of the husband, shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

SEC. 17. A widow may tarry in the mansion or chief dwelling house of her husband for two months after his death, whether her dower be sooner assigned her or not, without being liable to any rent for the same; and in the mean time she shall have a reasonable sustenance out of the estate of her husband.

SEC. 18. If the dower of any widow is not assigned and laid off to her within two months after the death of her husband, she shall remain in and possess the mansion or chief dwelling house of her late husband, together with the farm thereto attached, free of all rent, until her dower shall be laid off and assigned to her.

SEC. 19. In all assignments of dower to any widow, it shall be the duty of the commissioners who may be appointed to lay off the dower (if the estate will permit without essential injury) so to lay off the dower in the lands of the deceased husband that the usual dwelling of the husband and family shall be included in such assignment of dower to the widow.

SEC. 20. A widow shall be entitled, as a part of her dower, to the one third part of the slaves whereof the husband died seized or possessed, during her natural life, and one third part of the personal estate, in her own right.

SEC. 21. If a husband die leaving a widow and no children, such widow shall be endowed of one half of the real estate, and also one half of the slaves of which such husband died seized, and one half of the personal estate, absolutely and in her own right.

SEC. 22. At the death of any widow who hath dower in land or negroes, such property shall descend in accordance with the will of the deceased husband, or if the husband died intestate, then to descend in accordance with the law for the distribution of intestates' estates.

SEC. 23. If any husband shall devise and bequeath to his wife any portion of his real estate and slaves, or either of them, of which he died seized, it shall be deemed and taken, in lieu of dower, out of the estate of such deceased husband, unless such testator shall, in his will, declare otherwise.

SEC. 24. In cases of provision made by will for widows in lieu of dower, such widow shall have her election to accept the same, or be endowed of the lands, slaves, and other personal property, of which her husband died seized.

SEC. 25. If a widow for whom provision has been made by will, elect to be endowed of the lands, slaves, and other personal property, of which her husband died seized, she shall convey, by deed of release

and quitclaim, to the heirs of such estate, the land and slaves so to her devised and bequeathed, which deed shall be acknowledged or proven and recorded as other deeds for real estate are required to be acknowledged or proven and recorded.

SEC. 26. Such renunciation of the devise or bequest by deed, as provided for in the last preceding section, shall be deemed a sufficient notice of the renunciation of the interest of such widow in all the benefits she might claim by such will in the land and slaves of such deceased husband.

SEC. 27. Such renunciation by deed shall be executed within eighteen months after the death of such husband, or the widow will be deemed to have elected to take the devise and bequest contained in such will.

SEC. 28. A widow shall be endowed of lands sold in the life time of the husband, without her consent in legal form, against all creditors of the estate.*

SEC. 29. It shall be the duty of the heir at law of any estate of which the widow is entitled to dower, to lay off and assign such dower as soon as practicable after the death of the husband of such widow.

SEC. 30. If such dower assigned by the heir at law, be accepted by the widow, the heir at law shall make a statement of such assignment, specifying what lands and slaves have been assigned, and the acceptance of such widow shall be endorsed thereon; which statements and specification of dower and acceptance thereof, shall be proved or acknowledged by both parties, and filed with, and recorded by, the clerk of the court of probate, which will then be a sufficient assignment of dower, and shall bar any further demand for dower in the property specified in the statement of dower.

SEC. 31. If the heir to any estate be a minor or minors, they shall act, in the assignment of dower, by their guardians.

SEC. 32. If dower be not assigned to the widow within one year after the death of her husband, or within three months after demand made therefor, she may file in the court of probate, with the clerk thereof, her petition, setting forth what lands there are, their description and probable value, and what slaves, and their description and probable value, of which she claims dower.

SEC. 33. Upon the filing of which petition, the clerk shall issue a

* Sections 29 and 30 of the original law were repealed, and ordered not to be published. They stood between sections 28 and 29 of the above.

writ of summons thereon, directed to the sheriff of any county where the defendants reside, requiring him to summon such persons as may be named in the petition as defendants, to appear at the next term of such court, and answer such petition, and show cause, if any they can, why the dower claimed, or any part thereof, shall not be assigned to such widow.

SEC. 34. In all petitions for dower, the heir at law, or those in reversion, (and if they be minors, then their guardians,) and the executor or administrator, shall be made defendants.

SEC. 35. A petition for dower, if the summons be served fifteen days before the term to which it is made returnable, shall be heard and determined at that term, unless, for good cause shown, the court grant a continuance.

SEC. 36. If the summons be served within fifteen days of the term to which the same is returnable, it shall be heard and determined at the next term. By consent of parties, it may be tried at the first term.

SEC. 37. Petitions for dower shall be heard and determined by the court, without the necessity of formal pleading, upon the petition, answer, exhibits, and other testimony.

SEC. 38. The answers to petitions shall be sworn to.

SEC. 39. If, upon the hearing of any petition for dower, the court be of opinion that the petitioner is entitled to dower, or to any part thereof, as claimed in such petition, it shall order and decree such dower to be laid off and assigned in accordance with the law of dower.

SEC. 40. The court shall, in all cases when it orders and decrees dower to any widow, appoint three commissioners, of the vicinity, who shall proceed to the premises in question, and by survey and measurement, lay off and designate, by proper metes and bounds, the dower of such widow, and also make division of, and assign dower out of, the slaves of the estate, in accordance with the decree of the court.

SEC. 41. Such commissioners shall make a detailed report of their proceedings to the next term of the court of probate, which, if approved by such court, shall be entered of record, and be conclusive on the parties.

SEC. 42. In cases where land, tenements, or slaves, will not admit of division, the court being satisfied of that fact, or on the report of the commissioners to that effect, the court shall order that such tenements or lands be rented out, or the slaves hired out, and that one

third part of the proceeds be paid to such widow in lieu of her dower in such lands, tenements or slaves.

SEC. 43. When any of the parties who are required to be made defendants to petitions for dower, are non-residents of this State, they shall be brought in to answer such petition by notice published in some newspaper printed in this State, as in cases of non-resident defendants in chancery.

SEC. 44. When lands lie in different counties, the widow shall file her petition in every county where such lands are situate, or the slaves may be.

SEC. 45. When the defendants reside in different counties, the petition shall state the fact, and specify each county that any defendant shall reside in, and the names of such defendants.

SEC. 46. When defendants to petition of dower reside in different counties, the clerk shall issue counterparts of such summons to each county in which any defendant may reside.

SEC. 47. If the defendants, or any of them, refuse or neglect to answer within the three first days of the term to which the summons is returnable, the petition shall be taken for confessed against all or such part as fail to answer, and a decree entered accordingly.

SEC. 48. If the land or slaves assigned and laid off to any widow be deforced from her possession, she shall have her action for the recovery of possession thereof, with double damages for such deforcement, or she may sue for the damages alone, and recover double the actual damage sustained from time to time, until she be put in possession of her dower held by such deforcer or detainer.

SEC. 49. If the heir alien lands, or sell slaves, of which a widow is entitled to dower, she shall still be decreed her dower in such lands so aliened, in whose hand soever the land may be; and in case of slaves sold, she shall have her action against the heir so selling or disposing of such slaves for the two thirds of the actual value of such slaves.

SEC. 50. A widow may bequeath the crop in the ground of the land held by her in dower at the time of her death. If she die intestate, it shall go to her administrator.

SEC. 51. If any widow, possessed of slaves as of the dower of her husband, shall remove, or voluntarily permit to be removed, out of this State, such slaves, or any of their increase, without the consent of the heir, or those in reversion, such widow shall forfeit all such slaves which she so held of the endowment of her husband.

SEC. 52. If the consent of those in reversion of any slave held as dower by any widow cannot be had, to remove such slave out of the State, such widow may take such slaves so in her possession of the endowment of her husband to the court of probate, and there have the names, ages and description of such slaves recorded, and enter into bond, with sufficient security, to those in reversion, to be approved by the court, in double the value of such slaves so to be removed, conditioned that such slaves shall not be wasted, but shall be forthcoming to those in reversion at her death, (unless such slaves die,) with the increase. Then such widow shall be at liberty to remove such slaves to any slaveholding State in the United States, but not to a free State, or out of the United States to a foreign country.

SEC. 53. The consent of those in reversion, in writing, duly recorded, shall supersede the necessity of giving security in any case of the removal of dower slaves.

SEC. 54. If a widow holding dower in slaves marry, and the husband wish to remove such slaves without the State to any slaveholding State; by having the names, ages and description of such slaves entered of record, and giving the like bond as required of a widow, he shall be at liberty to remove such slaves in like manner as the widow might do.

SEC. 55. Slaves in the possession of the husband in right of his wife's dower, shall be forfeited to those in reversion, for removing, or attempting to remove them, contrary to the provisions of this act, in like manner as if in the hands of the widow.

SEC. 56. The heir, or those in reversion, of any slave held in dower, if they have reasonable cause to believe that any such slave is about to be removed from this State, or in any manner wasted, may apply to any judge of the circuit courts of this State, by bill, setting out the facts of the case; and if it appear to such judge that there is reasonable ground to apprehend that such slave will be wasted or removed from the State, he shall grant his injunction to restrain such person from the waste or removal of such slaves.

SEC. 57. When slaves held in dower are forfeited by the act of the widow, or, if she be married, by her husband, the heir, or those in reversion, may bring their action, and recover the possession of such slaves; or if, upon the hearing of any injunction, it shall be made appear to the court that the slaves so held in dower have been forfeited to those in reversion, the chancellor or court shall decree the possession of such slaves to those in reversion.

[Approved: February, 28, 1838.]

CHAPTER 53.

EJECTMENT.

SECTION
1, 2. In what cases maintainable.
3. Executor or administrator of persons who made improvements on public lands, may maintain action of.
4. Action of, to be brought and prosecuted in real names of parties, and may be against whom.
5. How persons through whom defendant claims, may be made co-defendants.
6. Averments necessary in declaration.
7. in declaration by executor or administrator.
8. What pleas may be pleaded, and form of.
9. Form of general issue.
10. What to be put in issue thereby, and evidence under it for defendant.
11. What plaintiff must prove, in order to recover.
SECTION
12. What additional proof necessary, when brought by joint tenant or tenant in common against co-tenant.
13. What damages to be recovered, and exceptions.
14. Judgment, where right of plaintiff expires, pending the action.
15. What judgment, when against defendant, and writ of inquiry.
16. When plaintiff may have writ of possession, and form of.
17. When judgment only for damages and costs, how execution shall issue.
18. Judgment for plaintiff, where not otherwise provided.
19. Action of trespass maintainable in cases mentioned in second section.
20. Limitation, where *title* not claimed.

SEC. 1. The action of ejectment may be maintained in all cases where the plaintiff is legally entitled to the possession of the premises.

SEC. 2. The action of ejectment may also be maintained in all cases where the plaintiff claims the possession of the premises, under or by virtue of, first, an entry made with the register and receiver of the proper land office of the United States; second, a pre-emption right under the laws of the United States; third, where an improvement has been made by him on any of the public lands of the United States, whether the lands have been surveyed or not, and where any person other than those to whom the right of action is given by the preceding clauses of this section is in possession of such improvement.

SEC. 3. The executor or administrator of any person who may have heretofore died, or who may hereafter die, and who in his life time made improvements on any of the public lands of the United States, whether he had a right of pre-emption to such improvements or not, under the laws of the United States, or whether the lands on which such improvements may have been made have been surveyed or not, may maintain an action of ejectment for the recovery of such

improvement, to the same extent, and with the same restrictions as provided by the preceding section for their testator or intestate.

SEC. 4. The action of ejectment shall be brought and prosecuted in the real names of the parties thereunto, and may be brought against the person in possession of the premises claimed, or his lessor, or both.

SEC. 5. The person from or through whom the defendant claims title to the premises, may, on his motion, be made a co-defendant.

SEC. 6. It shall be sufficient for the plaintiff to aver, in his declaration, that on some day therein to be specified, he was entitled to the possession of the premises, describing them, and being so entitled to the possession thereof, that the defendant afterwards, on some day to be stated, entered into such premises, and unlawfully withholds from the plaintiff the possession thereof, to his damage, any sum he may claim.

SEC. 7. In an ejectment brought by an executor or administrator, under the provisions of this act, it shall be sufficient for the plaintiff to aver in his declaration, that on the day therein specified, his testator or intestate was in possession of the premises, describing them, and by virtue of such possession, such plaintiff, on some day to be stated, became entitled to the possession of said premises, as executor or administrator, and that on some day thereafter, the defendant entered into and took possession thereof, to his damage, any sum he may claim.

SEC. 8. The defendant may plead the general issue to any action of ejectment, or he may plead his defence specially; and all pleadings and proceedings in the action, shall be conducted as in personal actions, except when it is otherwise prescribed.

SEC. 9. The general issue shall be, that the defendant is not guilty of unlawfully withholding the premises from the plaintiff, as alleged against him.

SEC. 10. Such plea shall put in issue every matter required to be established by the plaintiff on the trial, to entitle him to recover; and the defendant may, under such plea, give in evidence any matter in bar of the action.

SEC. 11. To entitle the plaintiff to recover, it shall be sufficient for him to show, that at the time of the commencement of the action, the defendant was in possession of the premises claimed, and that the plaintiff had title thereto, or had the right to the possession thereof, as is declared by this act to be sufficient to maintain the action of ejectment.

SEC. 12. If the action is brought by a joint tenant, or tenant in common, against his co-tenant, the plaintiff shall also be required to show, on the trial, that the defendant actually ousted him, or did some act amounting to a total denial of his right as such co-tenant.

SEC. 13. If the plaintiff prevail in the action, he shall recover, by way of damages, the rents and profits down to the time of assessing the same, except where the plaintiff, or those under whom he claims title, may have entered, in any land office of the United States, within this State, the improvement of the defendant, and the action is brought to recover the possession of such improvement; in which case, the plaintiff shall recover no damages.

SEC. 14. If the right of the plaintiff to the possession of the premises expires after the commencement of the action, and before the trial, the verdict shall be returned according to the fact, and judgment shall be entered only for the damages and costs.

SEC. 15. If judgment should be rendered against the defendant, the judgment shall be for the recovery of the premises, and a writ of inquiry shall be awarded to assess the damages.

SEC. 16. When the judgment for the plaintiff is both for the recovery of the possession of the premises, and for the damages, the plaintiff may have a writ of possession, which shall command the officer to whom it may be directed, to deliver to the plaintiff possession of the premises, and shall also command him to levy and collect the damages and costs, as in executions on judgments in personal actions.

SEC. 17. Where the judgment for the plaintiff is only for damages and costs, execution may be issued thereon, as on judgments in personal actions.

SEC. 18. In all cases where no other provision is made, the judgment, if for the plaintiff, shall be for the recovery of the possession of the premises, and the damages and costs.

SEC. 19. An action of trespass may be maintained in all the cases enumerated in the second section of this act.

SEC. 20. No action of ejectment, when the plaintiff does not claim title to the lands, shall be brought or maintained when the plaintiff, or his testator or intestate, has been five years out of possession.

[Approved and in force: February 26, 1838.]

CHAPTER 54.

ELECTIONS.

SECTION

1. What to be held on the first Monday of October, 1838, and every two years thereafter.
2. Election for governor, when held.
3. Each township to be an election district.
4. County court to fix place of holding elections, and appoint judges, and judges to appoint clerks.
5. Penalty for judge or clerk failing to attend, &c.
6. Judges appointed, how long to continue.
7. Failure of court to fix place, or appoint judges, or of judges to act, sheriff to fix place, and voters to appoint judges.
8. Elections in township where seat of justice is, to be held at court house.
9. Sheriff to give notice of election, how and when.
10. Proclamation, where to be put up.

OATH.

11. Judges to take oath, and form of.
12. Clerks to take oath, and form of.
13. When judges shall administer the oaths.
14. Certificate of person administering the oaths, and form of.

POLL BOOKS.

15. Clerks to make out poll books and forms, and at what time.
16. Sheriffs to deliver same to judges.
17. Polls, when to be closed.
18. Constable to attend, and duty of.
19. Judges to preserve order, and power to punish disorderly persons.
20. How judges to satisfy themselves as to qualifications of voters.
21. How persons may vote out of their own township, and what oath to be taken.
22. Penalty for voting when not qualified, and how recovered.
23. Penalty of voting more than once, and how recovered.
24. Penalty for misconduct of judge or clerk, definition of, and how recovered.

SECTION

25. Judges to certify, and clerks to attest poll books.
26. Disposition to be made of poll-books, and duty of judges therein.
27. Penalty for judge refusing to convey poll book to clerk.
28. Poll books, when to be opened, how, by whom, and abstract to be made by clerk of county court.
29. Abstracts to be authenticated, how, and deposited in office of said clerk.
30. Householders, when taken instead of justices, to open poll books, to be sworn.
31. Poll books to be compared publicly; where, and how notice to be given.
32. Copies of abstracts to be made. For what offices to be forwarded to secretary of state, how and when.
33. For governor, to whom to be forwarded, and when. Copies of abstract of votes for senator, to be sent to clerk of county first named in the district, and when.
34. Such clerk to give certificate to person elected.
35. Certificate to be given to each person elected representative.
36. Messenger to be despatched by secretary of state, for returns, and when.
37. Penalty of clerk for failing to send returns.
38. Secretary of state to count votes for representatives to congress, and governor to issue proclamation.
39. When two or more have an equal number of votes, and higher than any other person, governor to issue proclamation for a new election.
40. Secretary of state to lay before General Assembly a list of members elected.
41. Speaker of house to open and count votes for governor, when and where.

SECTION
42. Person having highest number of votes to be governor. If no election, to be elected by joint vote of General Assembly. Certificate of election, how given.
43. Tie between other candidates, the clerks and those who with them open the returns, to order special election, by proclamation.
44. Requisites of such order.
45. Upon vacancy in office of member of Congress, governor to issue proclamation to fill such vacancy.
46. Vacancy in office of governor, when to be filled by election, and how.
47. Returns of such election, how to be made, opened and compared.

CONTESTED ELECTIONS.

48. If such election contested, who shall decide—petition to be filed, and requisites of petition.
49. Testimony on, how to be taken.
50. How court to determine.
51. Election of county officers, where to be contested, and what notice to be given.
52. Either party to take depositions, and when court shall determine.
53. Proceedings of court, if person contesting is duly elected. Copy of such order to be sent to governor, and commission to issue.

SECTION
54. Governor to revoke commission first issued.
55. But no lawful act done under such commission, to be void.
56. Person contesting election of senator or representative, to give notice, and how.
57. Depositions therein, how to be taken.
58. Person failing to attend when summoned to give deposition, how compelled.
59. Justices to certify testimony, to whom.
60. What testimony to be received; and copy of notice to be transmitted with depositions.
61. Other contested elections for governor, how decided.
62. Petition for that purpose, how to be presented.
63. Joint committee to be appointed to take testimony, and their powers.
64. Notice to be given of taking such depositions, and how to be taken.
65. Power of party to attend and cross-examine.
66. Committee to report. Houses to decide by yeas and nays.
67. *Compensation*, of messenger for carrying returns of senatorial election.
68. Of judge of election, carrying returns.
69. Of clerk for furnishing poll books.

SEC. 1. On the first Monday in October, in the year one thousand and eight hundred and thirtyeight, and every two years thereafter, there shall be held an election in each township in this State, for the election of a member of congress, state senators in the respective senatorial districts where the terms for which senators may have been elected shall have expired, and members of the house of representatives in the General Assembly; a sheriff, clerk of the circuit court, coroner, county surveyor, and county treasurer, for each county, and justices of the peace for each township.

SEC. 2. On the first Monday of October, in the year one thousand eight hundred and forty, and every four years thereafter, there shall be held an election, in each township in this State, for the election of governor.

SEC. 3. Each township now established, or that may hereafter be established, shall compose an election district.

SEC. 4. The county court of each county, at the term of said court immediately preceding each general election, shall fix a place, in each township, at which all elections shall be held, and shall appoint three discreet persons, in each township, having the qualifications of electors, to act as judges of elections within the township; and the judges so appointed shall select two persons, having the like qualifications, to act as clerks thereof.

SEC. 5. If any person appointed a judge or clerk of an election, shall fail to attend and perform the duties required of him, he shall be fined by the county court, for the use of the county, in any sum not exceeding twenty dollars.

SEC. 6. The judges of election, appointed as aforesaid, shall continue to be judges of all elections within their respective townships, until the next general election.

SEC. 7. If the court shall fail to fix a place at which elections are to be held in any township, or to appoint judges of elections, or those appointed fail to act, it shall be the duty of the sheriff to fix a place for holding the election; and the voters, when assembled, may appoint the judges.

SEC. 8. All elections held in the township in which the seat of justice of any county is established, shall be held at the court house, or place where courts are held in such township.

SEC. 9. It shall be the duty of the sheriff of each county, at least twenty days before each general election, and ten days before the holding of each special election, to give public notice, by proclamation throughout the county, of the time and several places of holding such elections in his county, and the officers to be elected at that time.

SEC. 10. A copy of such proclamation shall be set up at each of the places fixed for holding such election, and at two or more of the most public places in each township.

SEC. 11. The judges, before entering on their duties, shall take, before some person authorized by law to administer oaths, the following oath:

———— "I, —— ——, do swear that I will perform the duties of judge of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same."

SEC. 12. The clerks of each election, before entering on their duties, shall take an oath that they will faithfully record the names of

all voters, and carry out, in lines and columns, for whom each elector voted.

SEC. 13. In case there shall be no person present at the opening of any election, authorized to administer oaths, it shall be lawful for the judges of the election to administer the oaths to each other and to the clerks; and such judges shall have full power and authority to administer all oaths that may be necessary in conducting any election.

SEC. 14. The person who shall administer the oaths to the judges and clerks of any election, shall cause a certificate to be prefixed to the poll-books, in words to the following effect:

———— "I do certify that ———— ————, ———— ————, and ———— ————, judges, and ———— ———— and ———— ————, clerks of the election held in the township of ————, in the county of ————, on the ———— day of ————, in the year one thousand eight hundred and ————, were severally sworn as the law directs, previous to entering on their respective duties." Which certificate shall be subscribed by the person administering the oaths, and shall be considered as a part of the record of the election.

SEC. 15. It shall be the duty of the clerk of the county court of each county, at least twentyfive days before each general election, and ten days before each special election, to make out, and deliver to the sheriff of his county, two blank poll books for each township in his county, properly laid off in columns, with proper captions, and forms of oaths and certificates attached thereto; and such poll books shall contain a sufficient number of pages to record the names of all the voters in the township.

SEC. 16. It shall be the duty of the sheriff forthwith to de liver such books to the judges of the election within their respective townships.

SEC. 17. The judges of each election shall open the polls at eight o'clock in the morning, and the same shall be closed between the hours of five and ten o'clock in the evening of same day.

SEC. 18. The constable shall attend each election in his township, preserve order, and do and perform such other things in relation to the duties of his office, as may be required of him by the judges.

SEC. 19. The judges of elections shall preserve order, and punish any disorderly person for contempt, by fine not exceeding twentyfive dollars, and may commit the offender to jail until the fine so imposed be paid, or he be otherwise discharged according to law.

SEC. 20. When any person shall offer to vote, and when no one

of the judges shall be acquainted with the qualifications of such person, the judges may examine him touching his qualifications as an elector, under oath, or they may satisfy themselves in relation thereto by any other testimony.

SEC. 21. When any person shall offer to vote in a township of which he is not a resident, if he possesses the necessary qualifications of an elector, he may be permitted to vote, on taking an oath that he has not voted, and will not vote, in any other township during the present election.

SEC. 22. Every person not being a qualified voter according to the constitution and laws of this State, who shall vote in any election within this State, knowing that he is not entitled to vote, shall forfeit the sum of twenty dollars, to be recovered by action of debt, before any justice of the peace, one half for the use of the county, and the other half for the use of the person who shall sue for the same.

SEC. 23. If any person shall vote more than once at any one election, he shall forfeit the sum of fifty dollars, to be recovered and applied in the same manner as provided in the preceding section.

SEC. 24. If any judge or clerk of any election, or any other person concerned in the conducting of any election, shall neglect, improperly delay, or refuse to perform, any of the duties required by this act, having undertaken so to do, or shall knowingly admit any person to vote not qualified according to law, or shall be guilty of corruption, partiality, or manifest misbehavior, in any matter or thing appertaining to such election, or shall unduly attempt to influence the election, or shall knowingly receive any improper vote, he shall forfeit and pay the sum of two hundred dollars, to recovered by indictment, or by an action of debt, in the name of any person who may sue for the same.

SEC. 25. At the close of each election, the judges shall certify, under their hands, the number of votes given to each person, and the office for which such votes were given, which shall be attested by the clerks.

SEC. 26. After closing the polls, and making the certificate required in the preceding section, the judges shall enclose and seal one of the poll books, together with such certificate, and direct it to the clerk of the county court of their county, and the packet, so endorsed and directed, shall be conveyed by one of the judges, to be determined by lot if they cannot otherwise agree, to the clerk of the county court, within three days after the close of the polls; and the other

poll book shall be retained by the judges, free for the inspection of all persons.

SEC. 27. If any judge of the election, on whom the lot may fall to carry such poll book to the county court, shall neglect or refuse to perform the service according to the provisions of this act, he shall forfeit the sum of two hundred dollars, to be recovered by indictment, or by action of debt, in the name of the proper county.

SEC. 28. On the fifth day after the election, or sooner if all the returns have been received, the clerk of the county court shall take to his assistance two justices of the peace of the county, if they can be conveniently had, and, if not, then two householders having the qualifications of electors, and shall proceed to open and compare the several election returns which have been made to his office, and make abstracts of the votes given for the several candidates for each office, on separate sheets of paper.

SEC. 29. Such abstracts, being signed by the clerk, and justices or householders, or any two of them, shall be deposited in the office of the clerk of the county court, there to remain.

SEC. 30. In case the clerk of the county court shall take to his assistance householders, instead of justices of the peace, to open and compare the returns of any election, such householders, before entering on the duties, shall take an oath, before the clerk, faithfully and impartially to discharge their duties.

SEC. 31. Each clerk, in comparing the returns of elections, shall do it publicly, in the court house, or in the place in which the courts are usually held, first giving notice of the same, by public proclamation, at the door.

SEC. 32. Each clerk of the county court shall, within two days after the examination and comparison of the returns of any election, deposit, in the nearest post office on the most direct route to the seat of government, certified copies of the abstracts filed in his office of the returns of the election for member to congress, State senators and representatives, clerk of the circuit court, sheriff, coroner, county treasurer, county surveyor, and justices of the peace, directed to the secretary of state; and he shall, at the same time, enclose and direct to the speaker of the house of representatives, at the seat of government, a certified copy of the abstract of the votes given for governor, if an election for governor was held at the same time.

SEC. 33. In all senatorial districts composed of two or more counties, the clerks of all the counties in the district shall transmit to

the clerk of the county court of the county first named in the district, within ten days after such election, a certified copy of the abstract of the senatorial election in each county.

SEC. 34. The clerk of the county court of the county to which such returns shall be made, after examining the same, shall give to the person having the highest number of votes a certificate of his election, under the seal of his office.

SEC. 35. It shall be the duty of each clerk of the county court to furnish each person elected a member of the house of representatives in the General Assembly, from his county, a certificate of his election, under his official seal.

SEC. 36. If there shall be a failure to receive any of the returns of any election, at the seat of government, for two mails after the same is due, the secretary of state shall despatch a messenger to the county from which returns have not been received, with directions to bring up such returns, or copies thereof.

SEC. 37. If such failure shall happen by the neglect of the clerk, he shall forfeit to the State the sum of one hundred dollars, together with the expenses of such messenger, to be recovered by action of debt, before any court having jurisdiction thereof.

SEC. 38. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed, to make returns of elections to the clerks of the county court, or sooner, if all the returns shall have been received, and cast up and arrange the votes from the several counties, or such of them as may have made returns, for each person voted for as member of congress; and the governor shall, immediately thereafter, issue his proclamation, declaring the person having the highest number of votes to be duly elected to represent this State in the house of representatives of the congress of the United States, and shall grant a certificate thereof, under the seal of State, to the person so elected.

SEC. 39. Should any two or more persons have an equal number of votes, and a higher number than any other person, the governor, in such case, shall issue his proclamation, giving notice of such fact, and that an election will be held at the several places of holding elections in the State, for such member of congress, in which he shall mention the day on which the election is to be held; and it shall be conducted, and returns thereof made, agreeably to the provisions of this act.

SEC. 40. It shall be the duty of the secretary of state, on the first day of each regular session of the General Assembly, to lay before each

house a list of the members elected, agreeably to the returns in his office.

SEC. 41. The speaker of the house of representatives, during the first week of the session, after each election for governor, shall, in the presence of both houses of the General Assembly, open and publish the returns of the elections in the several counties for governor.

SEC. 42. The person having the highest number of votes, shall be governor; but if two or more shall be equal and highest in votes, the two houses of the General Assembly shall, by joint vote, determine the election; and the president of the senate, and speaker of the house of representatives, shall make, and deposit in the office of the secretary of state, a certificate, declaring what person has been elected.

SEC. 43. Whenever there shall be a tie, or an equal number of votes given for any two or more candidates having the highest number of votes, (other than those duly elected,) for the office of senator, member of the house of representatives, clerk of the circuit court, sheriff, coroner, county surveyor, county treasurer, or justice of the peace, it shall be the duty of the clerk of the county court, and justices of the peace or householders, comparing the returns, or a majority of them, to issue an order to the sheriff of the county, or senatorial district, where the same may occur, directing him to issue his proclamation for holding an election agreeably to the provisions of this act.

SEC. 44. In all cases of such special election, the clerk, and justices or householders, when they issue their order to the sheriff, shall, in such order, state the day on which the election shall be held, giving a reasonable time for the same to be promulgated.

SEC. 45. When any vacancy shall happen in the office of member of congress from this State, by death, resignation, removal, or otherwise, it shall be the duty of the governor, by proclamation, to order the sheriffs of the several counties to order an election to be held, on a certain day to be named in such proclamation, to supply such vacancy; and such election shall be conducted in the same manner, and returns thereof made, as herein prescribed for general elections.

SEC. 46. Whenever the office of governor shall have become vacant, by death, resignation, removal from office, or otherwise, if such vacancy shall not happen within eighteen months of the end of the time for which the late governor shall have been elected, the president of the senate, or the speaker of the house of representatives, as the case may be, exercising the powers of governor for the time being, shall immediately cause an election to be held to fill such vacancy,

giving, by proclamation, sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general elections, so far as applicable.

SEC. 47. The returns of such election shall be made to the secretary of state, who, in presence of the acting governor, and the judges of the supreme court, or one of them at least, shall compare them, and together with said acting governor and judges, declare who is elected.

SEC. 48. If such election be contested, it shall be decided by the supreme court; and the party contesting such election, shall present his petition to the court, setting forth the points on which he will contest the same, and the facts which he will prove in the support of such points.

SEC. 49. On the presentation of such petition, the court shall fix a time for hearing the same, and shall direct that testimony be taken according to such rules as may be adopted; but no testimony shall be received on the part of the person contesting, which does not relate to the points specified in the petition.

SEC. 50. At the time and place fixed for hearing such petition, the court shall proceed to determine the same in a summary manner, and shall declare who is duly elected, and shall cause a certificate thereof to be filed in the office of the secretary of state.

SEC. 51. When the election of any clerk of the circuit court, sheriff, coroner, county surveyor, county treasurer, or justice of the peace, shall be contested, it shall be before the county court; and the person contesting any such election, shall give to the opposite party notice in writing, ten days before the term of the court at which such election shall be contested, specifying the grounds on which he intends to rely; and if any objection be made to the qualification of voters, the names of such voters, with the objection, shall be stated in the notice; and the parties shall be allowed process for witnesses.

SEC. 52. Either party may, on giving notice thereof to the other, take depositions, to be read in evidence on the trial; and the court shall, at the first term, (if fifteen days shall have elapsed after such election, and if less than fifteen, then at the second term,) in a summary way, determine the same according to evidence.

SEC. 53. If the court shall be of the opinion that the person proclaimed elected is not duly elected, and that the person contesting is elected, an order shall be entered up to that effect, and a copy thereof shall forthwith be transmitted to the governor, who shall commission the person declared duly elected by such order.

SEC. 54. If the person proclaimed duly elected, shall have been commissioned previous to the making the order annulling his election, it shall be the duty of the governor to cause such person to be notified that his commission is revoked.

SEC. 55. Nothing in this act shall be construed so as to make void any act of the person so commissioned, that would otherwise have been lawful.

SEC. 56. If any candidate of the proper county or district, contests any election of any person returned duly elected to the State senate or house of representatives, such person shall give notice thereof in writing, to the person whose election he contests, or leave a written notice thereof at the house where such person last resided, within twenty days after the return of the election to the clerk's office, expressing the points on which the same will be contested, and the names of two justices of the peace who will attend to the taking of the depositions, and when and where they will attend to take the same.

SEC. 57. The time of taking such depositions shall not exceed thirty days from the day of the election; and the justices, or either of them, shall issue subpœnas to all persons required by either party, commanding such persons to appear and give testimony at the time and place therein mentioned.

SEC. 58. If any person summoned as a witness to testify in any contested election, shall fail to attend, his attendance may be compelled by attachment.

SEC. 59. The justices shall hear and certify all testimony relative to such election to the president of the senate, if the contest is for a seat in the senate; and if for a seat in the house of representatives, then to the speaker of the house of representatives.

SEC. 60. No testimony shall be received on the part of the person contesting the election, by the justices, which does not relate to the points specified in the notice, a copy of which notice, attested by the person who delivered or served the same, shall be delivered to the justices, and be by them transmitted with the depositions.

SEC. 61. All contested elections of governor, except as herein provided, shall be decided by the joint vote of both houses of the General Assembly; and in such joint meeting the president of the senate shall preside.

SEC. 62. If any person contest the election of governor, he shall present his petition to the General Assembly, setting forth the points on which he will contest the same, and the facts which he will prove

in support of such points, and shall pray for leave to introduce his proof; and a vote shall be taken, by yeas and nays, in each house, whether the prayer shall be granted.

SEC. 63. If a majority of the whole number of votes of both houses shall be in the affirmative, they shall appoint a joint committee to take the testimony on the part of the petitioner, and also on the part of the person whose place is contested, with power to send for witnesses; who may issue warrants, under the hand of the chairman, to any judge or justice of the peace, to take the deposition of witnesses, at such time and place as the warrant shall direct; and the points to which the testimony is to be taken shall be set forth in such warrant.

SEC. 64. Reasonable notice shall be given by the party in whose favor depositions shall be allowed to be taken, to the opposite party, of the time and place of taking the same; and the judge or justice shall proceed in all things, in the attendance of witnesses, and in taking and certifying the testimony, as is directed in the preceding section.

SEC. 65. The party shall also be allowed to attend the examination of witnesses before the committee, and to cross-examine them; but no testimony shall be taken except in relation to the points set forth in the petition.

SEC. 66. The committee shall report the facts to the two houses, and a day shall be fixed, by a joint resolution, for the meeting of the two houses, to decide upon the same, on which decision the yeas and nays shall be taken, and entered on the journal of each house.

SEC. 67. There shall be allowed to the messenger employed to convey the returns of any senatorial election to the clerk of the county in the district to whom such returns are required to be made, at the rate of five cents per mile, going and returning, to be paid by the county sending such returns.

SEC. 68. There shall be allowed to each judge of the election carrying the returns of any elections from his township to the clerk of the county court, five cents per mile, going and returning, from the place of holding the election to the clerk's office, to be paid by the county.

SEC. 69. Each clerk of the county court shall be allowed, for furnishing blank poll books according to the provisions of this act, a sum not exceeding one dollar for each township.

[Approved and in force: February 28, 1838.]

CHAPTER 55.

ELECTORS.

SECTION
1. For president and vice president, election of, returns thereof, &c.
2. Duty of governor to give lists of names to electors, and fees of messenger.
3. Duties of the electors, and their compensation.
4. Vacancies, how filled.
5. Who are ineligible.
6. Contested elections of, how decided.

SEC. 1. The qualified voters in this State, shall meet at their respective places of holding elections, on the first Monday of November, A. D. 1836, and on the first Monday of November in every fourth year thereafter, and shall proceed to choose as many fit and proper persons as the State shall be entitled to, as electors of president and vice president; which election shall be conducted by the judges who may have been appointed to hold the general elections of the State for the same year, and under the same regulations as are or may be required by the law regulating such general elections; and it shall be the duty of the judges of such elections, in the different townships, to make returns thereof to the clerks having the transaction of county business for their respective counties, within five days after such elections; which clerks shall, within five days after they receive such returns, certify and transmit the same, by some person employed for that purpose, or by mail, to the governor, whose duty it shall be, within twenty days after the day of election, to add up the votes from the several counties; and the persons having the highest number of votes, shall by him be declared elected; and it shall be the duty of the governor, at the expense of the State, in all cases, immediately to notify the persons chosen of their election, as soon as the same shall have been ascertained agreeably to the provisions aforesaid.

SEC. 2. The governor shall, on or before the meeting of such electors, cause three lists of the names of such electors to be made and delivered to them; and the person or persons employed in giving the notices, or conveying returns, as aforesaid, shall be allowed five cents for every mile such person or persons may travel in going and returning in the performance of the services aforesaid, to be audited and paid as other claims.

SEC. 3. The electors shall meet at the seat of government, on the first Wednesday in December next ensuing their appointment, and shall then and there give their votes for president and vice president, and shall do and perform all the duties required of them by the act of congress in that case made and provided; and shall receive for their services the same compensation as the members of the General Assembly, to be audited and paid as other claims.

SEC. 4. If the electors appointed under this act, or any of them, fail to attend at the seat of government, by the hour of two o'clock in the afternoon of the day pointed out in this act for electing president and vice president of the United States, then and in that case, the General Assembly, if in session, shall proceed immediately, by a joint vote of the two houses, to fill such vacancy or vacancies; but if the said General Assembly shall not, on said day, be in session, then and in that case, the governor shall immediately fill such vacancy or vacancies.

SEC. 5. No senator or representative in congress, or any person holding an office of trust or profit under this State or the United States, shall be eligible as an elector of president and vice president.

SEC. 6. In case the election of said electors, or any of them, be contested, it shall be decided by the judges of the supreme court.

[Approved and in force: September 24, 1836.]

CHAPTER 56.

EMANCIPATION.

SECTION
1. How to be emancipated.
2. Effect of emancipation.
3. Still liable for prior debts of persons emancipating.
4. Where the person emancipating shall support the slave emancipated.
5. And in what cases the circuit court may distrain and sell his property for that purpose.
6. Copy of deed of emancipation to be delivered to slave.
7. And copy of will, where by will.
8. Fees for making such copy, how to be paid.

SEC. 1. Any person may emancipate his slave, by last will and testament, or any other instrument in writing under hand and seal, at-

tested by two witnesses, and proved in the circuit court of the county where he resides, or acknowledged by the party in the same court.

SEC. 2. Such emancipation shall have the effect to discharge the slave from the performance of any contract entered into during servitude, and shall make such slave as fully and perfectly free, as if such slave had been born free.

SEC. 3. All slaves emancipated under the provisions of this act, shall be liable to be taken in execution, to satisfy any debt contracted by the person emancipating them, prior to the emancipation, as if no such emancipation had been made.

SEC. 4. The person emancipating a slave under the provisions of this act, shall be held to support and maintain such slave: first, where the slave shall not be, in the judgment of the court, of sound mind; second, where the slave shall be above the age of fortyfive years; third, where the slave being a male, shall be under the age of twenty-one years, or being a female, under the age of eighteen years.

SEC. 5. The circuit court of the county in which the person emancipating any slave may reside, shall upon the application of the county court, or any inhabitant of the county, order the sheriff to distrain and sell so much of the personal or real estate of such person, as shall be sufficient to support any slave that he may have emancipated, when he may be chargeable with the maintenance of such slave.

SEC. 6. Every person emancipating a slave, shall cause to be delivered to such slave a copy of the deed of emancipation, attested by the clerk, under the seal of the court in which such deed was proved or acknowledged.

SEC. 7. Where the emancipation of any slave has been by last will and testament, the executor or administrator with the will annexed, shall cause to be delivered to such emancipated slave, a copy of such will attested, as required in the preceding section in case of a deed.

SEC. 8. The fees for making out and attesting such copies shall be paid by the person emancipating such slave, or his executor or administrator.

[Approved: February 19, 1838.]

CHAPTER 57.

ESCHEATS.

SECTION
1. When real or personal estate shall escheat.
2. Administrator to account in such case, when and how.
3. Certificates of surplus in hands of administrator to be granted, and delivered to whom.
4. Administrator to pay over surplus, and proceedings thereon.
5. On failure to pay over, motion for judgment, and proceedings thereon.
6. Judgment, form of, &c.
7. If auditor's certificate produced, costs nevertheless to be paid.
8, 9. Duty of prosecuting attorney.
10. To file information when land hath escheated, in what manner, and form of.
11. Scire facias to issue thereon, against whom, and form of.
12. Service of, and order to all persons interested to appear, to be published.
13. Persons interested allowed to defend.
14. Judgment for want of defence, and what.
15. Issue upon defence, how made up and tried.

SECTION
16. Judgment on, when found for the State.
17. when against the State, and costs, how collected.
18. Judgment for the State to contain description of premises, and to vest the estate.
19. Writ upon such judgment.
20. Record and process to be exemplified and recorded, and effect thereof.
21. Appeal or writ of error granted.
22. Auditor to keep accounts of money paid into treasury and lands vested in State.
23. When persons may reclaim money, and proceedings therefor.
24. Court to adjudicate. If reclaimer allowed, order of repayment, form of, and to whom directed.
25. Who may reclaim lands, within what time, and proceedings therefor.
26. Decree thereon, and effect of. No costs allowed.
27. Limitation of reclaimer.
28. Estate of which State so seized, may be sold, how, and effect of.

SEC. 1. If any person die seized of any real or personal estate, without any devise thereof, and leaving no heirs or representatives capable of inheriting the same, or the devisees be incapable of holding the same, and where there is no owner of real estate capable of holding the same, such estate shall escheat to and vest in the State.

SEC. 2. Where there is administration granted, and there are no known heirs or legal representatives of the intestate, or no person shall appear, within two years after granting letters of administration, to claim the personal estate of such intestate, as next of kin, the administrator, in the settlement of his accounts with the proper court, shall account for all money which may come to his hands as administrator.

SEC. 3. If there be more than sufficient to pay the debts of the deceased, and the expenses of administration, such court shall, on set-

tlement, ascertain the amount remaining in the hands of such administrator, and grant duplicate certificates thereof, one of which shall be delivered to the circuit attorney prosecuting for such circuit, and the other to the auditor of public accounts, who shall charge the administrator with the amount.

SEC. 4. Such administrator shall pay the amount into the State treasury within three months after such settlement; and when he shall pay the same, the treasurer shall give him duplicate receipts therefor, one of which he shall deliver to the auditor of public accounts, who shall grant him a certificate thereof, and credit him with the amount so paid into the treasury; and shall charge the treasurer therewith.

SEC. 5. The court having the settlement of accounts with such administrator, shall, on the production of the auditor's certificate to them, credit the administrator with the amount; but if payment shall not be made as aforesaid, the prosecuting attorney for the circuit shall move the court for judgment against such administrator and his securities, or either of them, for such balance, and three per cent. per month thereon, giving to such administrator, and his securities, ten days' notice of such intended motion; and the said court shall hear and determine the same in a summary manner, without the necessity of formal pleading.

SEC. 6. If such administrator, or his securities, shall not produce the auditor's certificate, showing full payment into the State treasury, such court shall render judgment against such administrator and his securities, or such of them as shall receive notice, for the amount due, and three per cent. per month thereon, from the time the balance was first ascertained, until the rendition of the judgment, and the costs of the proceedings, and issue execution thereon.

SEC. 7. If the auditor's certificate be produced, such administrator and his securities shall, nevertheless, be adjudged to pay the costs of the proceeding, and shall in no case recover costs.

SEC. 8. Where there are no known heirs or legal representatives, the prosecuting attorney for the circuit within which the courts are held wherein the accounts of any such administrator are required to be settled, shall examine the proceeding of such administration, shall cause process to be issued to compel the prompt settlement of his accounts, attend such settlement, when necessary, on behalf of the State, contest any item which to him shall appear unjust or unreasonable, and, in case of waste and mismanagement of the estate, or other mal-administration, cause proper suits and proceedings to be instituted and prosecuted.

SEC. 9. He is required, in behalf of the State, to do all things touching such administration which could be done by any sole heir, and especially to preserve the real estate from being improperly sold, wasted, or damaged; and it is made his special duty, by himself or his deputy, whom he may make when inconvenient to attend in person, to attend all the probate courts in his circuit in which any case under this act may be pending.

SEC. 10. When the prosecuting attorney for the circuit shall be informed, or have reason to believe, that any real estate within his district or circuit hath escheated to the State, and such estate shall not have been sold, according to law, within three years after the death of the person last seized, for the payment of the debts of the deceased, he shall file an information, in behalf of the State, in the circuit court of the county in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names of the terre-tenants, and persons claiming the estate, if known, and the facts and circumstances in consequence of which such estate is claimed to have escheated, and alleging that, by reason thereof, the State of Arkansas hath right to such estate.

SEC. 11. Such court shall award and issue a scire facias against such person, bodies politic or corporate, as shall be alleged, in such information, to hold, possess or claim such estate, requiring them to appear and show cause why such estate should not be vested in the State, at the next term of the court.

SEC. 12. Such scire facias shall be served fifteen days before the return day thereof; and the court shall make an order, setting forth briefly the contents of such information, and requiring all persons interested in the estate to appear and show cause, at the next term of the said court, why the same shall not be vested in the State; which order shall be published four weeks in some newspaper printed in this State.

SEC. 13. All persons, bodies politic, and bodies corporate, named in such information as terre-tenants, or claimants of the estate, may appear and plead to such proceeding, and may traverse the facts stated in the information, or the title of the State to the lands and tenements therein mentioned, at any time on or before the third day after the return of the scire facias; and any other person claiming an interest in such estate, may appear and be made a defendant, and plead, by motion for that purpose in open court, within the time allowed for pleading.

SEC. 14. If no person shall appear and plead, or, appearing, shall refuse to plead, within the term, then judgment shall be rendered that

the State be seized of the lands and tenements in the information claimed.

SEC. 15. If any person appear, and deny the title set up by the State, or traverse any material fact in the information, issue shall be made up and tried as other issues of fact; and a survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question.

SEC. 16. If, after the issues are tried, it appears, from the facts found or admitted, that the State hath good title to the lands and tenements in the information mentioned, or any part thereof, judgment shall be rendered that the State be seized thereof, and recover costs against the defendant.

SEC. 17. If it appear that the State hath no title in such estate, the defendant shall recover his costs, to be taxed and certified by the clerk; and the auditor of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the treasury of the State, which shall be paid as other demands on the treasury; but no defendant shall be entitled to recover costs, unless the title to such estate shall appear to the court, by the facts found, to be in him.

SEC. 18. When any judgment shall be rendered that the State be seized of any real estate, such judgment shall contain a description of such estate, and shall vest the title in the State.

SEC. 19. A writ shall be issued to the sheriff of the proper county, commanding him to seize the real estate vested in the State.

SEC. 20. Upon the return of such writ of seizure, the prosecuting attorney for the circuit shall cause the record and process to be exemplified under the seal of the court; and deposit the same in the office of the auditor of public accounts, and cause a transcript of the judgment to be recorded in the office of the recorder of the county in which the lands lie; and such judgment shall preclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in force.

SEC. 21. Any party who shall have appeared to any proceedings, and the prosecuting attorney for the circuit on behalf of the State, shall have the right to prosecute an appeal or writ of error upon such judgment.

SEC. 22. The auditor shall keep just accounts of all moneys paid into the treasury, and of all lands vested in the State, under the provisions of this act.

SEC. 23. If any person appear within seven years after the death

of the intestate, and claim any money paid into the treasury under this act, as heir or legal representative, he may file a petition to the circuit court, or court having chancery jurisdiction for the county in which the estate is situate, stating the nature of his claim, and praying that such money may be paid to him; a copy of which petition shall be served on the prosecuting attorney for the circuit, who shall put in an answer to the same.

SEC. 24. The court shall examine the claim, and the allegations and proofs; and if they shall find that such person is entitled to any money so paid into the treasury, such court shall make an order, directing the auditor to issue his warrant on the treasurer for the payment of the same, but without interest or costs; a copy of which order, under the seal of the court, shall be a sufficient voucher for issuing such warrant.

SEC. 25. If any person appear and claim lands vested in the State within seven years after the death of the last person seized, such person (other than such as were served with scire facias, or appeared to the proceeding, their heirs or assigns) may file his petition in the circuit court, or court having chancery jurisdiction in the county or district where such land may lie, setting forth the nature of his demand or claim, and praying that the said estate may be relinquished to him.

SEC. 26. A copy of which petition shall be served on the prosecuting attorney for the circuit, who shall answer; and the court shall examine the claim and allegations, together with such proof as may be adduced; and if it appear that the person is entitled to such lands, the court shall decree accordingly, which shall divest the interest of the State in such estate; but no costs shall be adjudged against the State in such case.

SEC. 27. All persons who fail to appear and file their petitions within the time limited, shall be forever barred, except the usual saving to infants.

SEC. 28. The General Assembly may cause such estate to be sold at any time after seizure, in such manner as may be provided by law; in which case the claimants shall be entitled to the proceeds in lieu of the real estate, upon obtaining a decree or order as aforesaid.

[Approved: March 3, 1838.]

CHAPTER 58.

ESTRAYS.

SECTION

1. Who may take up estrays, and what.
2. Notice thereof to be given to justice.
3. Justice to appoint appraisers.
4. Appraisement, how made and sworn to.
5. To be delivered to justice, and a copy to the taker up.
6. Original to be deposited with clerk of county court.
7. Bond to be given by taker up.
8. Bond to be filed with clerk.
9. Clerk to keep estray book.
10. Advertisements to be made out, and how published.
11. When publication to be made in newspaper also.
12. Pound to be provided by county.
13. Estray when to be taken, and how long kept in pound.
14. Within what time and how, owner may reclaim estray.
15. Order thereupon by justice.
16. On delivery of animal by taker up, receipt to be endorsed on order, and filed, whereby bond cancelled.
17. Owner not appearing within one year, property forfeited.
18. How owner may recover property when refused to be given up.
19. No person to take up neat cattle, hogs or sheep, out of their inclosure, from first of April to first of November.
20. Compensation for keeping estrays, when allowed, and how much.
21. Estrays not to be sold, disposed of or killed.
22. Effect of death or escape of estrays.
23. Estrays not to be taken up, except on plantation, or in immediate vicinity.
24. Taker up not to work, or exercise acts of ownership over estrays, till notice given to justice.
25. Payment by taker up into county treasury.
26. On delinquency of taker up, notice to be issued.
27. How served.
28. Proceedings, judgment and execution thereon.
29. When judgment for costs entered notwithstanding payment into treasury or return of estray to owner.

SEC. 1. Every citizen, resident householder in any county in this State, on finding any horse, mare, mule, jack, or jenny, any neat cattle, hog, or sheep, of any age, running at large, the owner of which is not known, may take into his custody such animal.

SEC. 2. Every person taking up such animal, under the provisions of this act, shall, within one week thereafter, give notice to some justice of the peace of the county, of the taking up of such animal.

SEC. 3. Every justice of the peace, on receiving notice of any animal being taken up, shall forthwith appoint three appraisers, who shall be citizen householders of the county, to appraise and describe such animal.

SEC. 4. The appraisers so appointed shall, as soon as practicable, proceed to view such animal, and make out a detailed description thereof, stating the marks, brands, age, color, stature, and value thereof; which description and valuation shall be signed by the appraisers, and sworn to before the justice appointing them.

SEC. 5. Such description and valuation, so sworn to, shall be, by the appraiser, delivered to the justice of the peace, who shall deliver to the person taking up such animal a copy thereof.

SEC. 6. The original of such certificate of appraisement the justice shall, within ten days, cause to be deposited in the office of the clerk of the county court of his county.

SEC. 7. Every person taking up any animal, shall, at the time of the appraisement thereof, enter into bond, with sufficient security, to be approved by the justice, in the value of such animal, to the State of Arkansas, for the use of the proper county, conditioned that if the owner of such animal shall, within one year from the date thereof, appear, and prove his property in the animal so taken up, that he will deliver up such animal; or, if such owner shall fail to prove his property therein within the year, that he, the obligor, will pay into the county treasury the one half of such appraised value, stating the amount of such appraisement.

SEC. 8. The justice, at the time of depositing the certificate of appraisement with the clerk for record, shall also file with such clerk the bond required by this act, which bond shall be kept by such clerk.

SEC. 9. It shall be the duty of every clerk of the county court to keep a book in which he shall record all descriptions and valuations of animals taken, and shall also note on all bonds required to be deposited in his office, under the provisions of this act, the time of filing the same, and keep such bonds safely for the use of the county.

SEC. 10. The person taking up any animal under the provisions of this act, shall immediately make out, from the copy of the appraisement delivered to him by the justice, four advertisements, and put them up in the most public places in his township and county.

SEC. 11. If the animal taken up be a horse, mare, mule, jack, or jenny, the taker up shall, in addition to the advertisement required by this act, cause a copy of the description and appraisement to be inserted in some newspaper printed in this State, if such animal be of the appraised value of twenty dollars, for three weeks, which publication shall be commenced in such newspaper within one month after appraisement.

SEC. 12. It shall be the duty of the county court (at the expense of the county) to provide a pound-lot or stray-pen sufficient to contain all stray horses, mares, mules, jacks, or jennies, which may be taken up in their respective counties, which stray-pen shall be within one half mile of the court house.

SEC. 13. Every person taking up any horse, mare, mule, jack, or jenny, shall, on the first day of the next term of the circuit court of their county, take such animal to the stray-pen of his county, and keep it therein, subject to the inspection of all persons, from eleven of the clock in the forenoon until three of the clock in the afternoon, of such day.

SEC. 14. If the owner of any stray animal shall, within one year from the filing of the bond required under this act, appear and claim the same, he shall notify the taker up thereof; and the owner shall establish his claim to such animal before some justice of the peace of the county, by such evidence as shall be satisfactory to such justice.

SEC. 15. On such justice being satisfied of the ownership of any animal so taken up, he shall make an order in writing, requiring the taker up of such animal to deliver the same to the owner, on his paying the legal costs that have accrued thereon.

SEC. 16. The person having the animal so proven and required to be given up, by such justice's order, shall deliver the same to the owner on receiving the amount of costs legally due thereon, and shall take a receipt endorsed on the justice's order for such animal; which order and receipt thereon shall be filed with the clerk of the county court of the proper county, upon the filing of which his bond shall be deemed to be cancelled.

SEC. 17. If the owner of any lost animal shall not appear, and prove his property therein, within one year after the time of setting up the copies of the valuation and description of such animal, and the filing of the bond required, he shall forfeit his right to such animal, and the property therein shall be vested in the finder or taker up of the same.

SEC. 18. If any person that has taken up any animal shall refuse to deliver the same to the owner, on his having complied with the requisitions of this act, as respects proving the same, such owner shall have his action of detinue or trover and conversion, and if such owner recover in such action, he shall also recover double costs.

SEC. 19. No person shall take up any neat cattle, hogs, or sheep,

running in the range, or unless the same shall be found within their inclosure, from the first of April until the first of November.

SEC. 20. No person shall charge anything for keeping any horse, mare, mule, jack, or jenny, which may be worked or ridden while in the possession of the taker up. For the keeping of other animals, or the aforesaid beasts, if not worked or ridden, the person taking them up shall be entitled to a reasonable compensation, to be adjudged by the justice before whom the owner proves his right of property.

SEC. 21. No person taking up any animal shall sell, exchange, or dispose of the same, in any manner, nor kill any neat cattle, hogs, or sheep, until after the expiration of the time that the owner has the right to prove his property in the same.

SEC. 22. If any of the aforesaid animals die, or escape from the possession of the taker up, before the owner shall establish his right thereto, if such death or escape be without the default of the person having the lawful possession thereof, he shall not be liable for the same.

SEC. 23. No person shall take up any stray beast, except on his own plantation or in his immediate vicinity.

SEC. 24. No person shall use, work, or exercise any acts of ownership over, any animal by him taken up, until he shall have given notice thereof to some justice of the peace, except that he may ride such beast to the residence of the justice, for the purpose of giving the notice to such justice.

SEC. 25. Every person who shall take up any stray beast, which the owner shall not reclaim within one year, shall pay into the county treasury the one half of the appraised value of such beast in discharge of his bond.

SEC. 26. After the term of one year from the taking up of any beast, if the order of the justice requiring the taker up of such beast to return the animal to the owner, with the owner's receipt thereon, shall not be filed with the clerk, or the one half of the appraised value paid into the treasury, and the county treasurer's receipt filed with the clerk, such clerk shall issue a notice to the delinquent to appear at the next term of the county court for such county, and show cause, if any he can, why judgment shall not be entered against him, in favor of the State, for the benefit of the county.

SEC. 27. Such notice shall be, by the clerk, delivered to the sheriff, and by him served on such person.

SEC. 28. If no sufficient cause be shown, the court shall enter

judgment against such delinquent for the amount due the county, with costs; and execution shall issue for the same as in other cases. The cause shall be tried without the necessity of formal pleadings.

SEC. 29. If any person shall fail to file, with the clerk of the county, the treasurer's receipt, or the receipt of the owner of the animal for which he executed his bond on taking up the same, although he may have paid the amount due on such bond to the county treasurer, or returned the animal in question to the proper owner, the court shall enter judgment against him for all costs.

[Approved: March 3, 1838.]

CHAPTER 59.

EVIDENCE.

SECTION

1. Printed statute books of this State, evidence of private acts contained therein.
2. Printed statute books of other States and Territories.
3. Copies of act, law or resolution in printed statute books of such States and Territories certified by secretary of state of this State.
4. Proceedings before justices of the peace, certified by such justice.
5. Clerk's copies of docket, &c. of justices.
6. Entries in land office books, &c. certified by register or receiver.
7. Books of original entries of deceased merchants, how verified, and how far evidence.

SECTION

8. Must first prove reputation of deceased.
9. Not to include hawkers or pedlers.
10. Copies of ordinances, &c. of city or town, and how authenticated.
11. Statutory bonds of officers, and how certified.
12. Copies of contracts between individuals and the State, State officers, counties or persons for a county, by virtue of law, and how authenticated.
13. Copies of bonds of executors, &c. and bonds in judicial proceedings, and how certified.
14. When the courts may require production of the original bond.

SEC. 1. The printed statute books of this State, shall be evidence of the private acts contained therein.

SEC. 2. The printed statute books of the several States and Territories of the United States, purporting to have been printed under the authority of such States or Territories, shall be evidence of the legislative acts of such States or Territories.

SEC. 3. Copies of any act, law or resolution, contained in the printed statute books of any of the States and Territories of the United States, purporting to have been printed by authority, and which are

now, or which may hereafter be deposited in the office of the secretary of this State and required by law to be there kept, certified under the seal of the secretary of state, shall be admitted as evidence.

SEC. 4. Copies of proceedings before justices of the peace, certified by the justice before whom the proceedings were had, shall be evidence of such proceedings.

SEC. 5. When the docket, files, books and papers of a justice of the peace shall have been delivered to the clerk of the circuit court, according to law, copies of such docket, files, books and papers, certified by such clerk, shall be evidence.

SEC. 6. Copies of entries made in the books of any land office of this State, or papers filed therein, certified by the register or receiver, shall be evidence to the same extent as the original books or papers would be if produced.

SEC. 7. The regular and fairly kept books of original entries of a deceased merchant, or regular trader, or any person keeping running accounts for goods, wares, merchandise or other property sold, or labor done, accompanied by the affidavit of the executor or administrator of such deceased person, or some creditable person for him, setting forth that they are the books or accounts of his testator or intestate, shall be evidence to charge the defendant for the sums therein specified, subject to be repelled by other competent testimony.

SEC. 8. To entitle the party to introduce such evidence, he must first establish, to the satisfaction of the court, that his testator or intestate had the reputation of keeping correct books.

SEC. 9. Nothing in the two preceding sections shall be so construed as to extend to, or include, hawkers or pedlers.

SEC. 10. Printed copies of the ordinances, resolutions, orders and by-laws of any city or incorporated town in this State, published by the authority of such city or incorporated town, and manuscript copies of the same, certified under the hand of the proper officer, and having the corporate seal of such city or town attached thereto, shall be received as evidence.

SEC. 11. Copies of all bonds required by law to be given by sheriffs, collectors, State and county treasurers, clerks of the supreme and circuit courts, and all officers of or under the State, who are required by law to give bond for the faithful performance of their duties, duly certified under the seal of office, of the officer in whose custody such bonds are required by law to be kept, shall be received as evidence, to the same extent as the originals.

SEC. 12. Copies of contracts entered into by individuals with the State, or any officer thereof, or with any county, or with any person for the benefit of any county, under or by the authority of any law, or the lawful order of any court, in the custody of any officer, duly certified and attested, under the official seal of such officer, or, if such officer has no official seal, then verified by his affidavit, shall be allowed as evidence to the same extent as the original.

SEC. 13. Copies of all bonds required by law to be given by executors, administrators, guardians and commissioners, for the faithful performance of their duties as such, and the bonds of principal and security, required to be taken in the course of any judicial proceeding, in any of the courts of this State, duly certified and attested, under the seal of office of the officer to whom by law the custody of the same is committed, shall be evidence to the same extent as the originals.

SEC. 14. When suit shall be brought on any copy of a bond, or contract, or writing, mentioned in any of the three preceding sections, and the defendant shall plead *non est factum*, the court may, if necessary to the attainment of justice, require the production of the original bond or writing.

[Approved: December 14, 1837.]

CHAPTER 60.

EXECUTION.

SECTION

1. To be issued upon judgment, order or decree
2. Generally to be a *fi. fa.*
3. Upon what affidavit a *ca. sa.* may issue.
4. Not to issue against property of heir, executor or administrator.
5. Against such heir, &c. to be *fi. fa.*
6. Form of *ca. sa.*
7. of *fi. fa.*
8. Of *fi. fa.* against heir, devisee, executor or administrator.
9. Executions, when returnable.
10. May run from court of record into any county in the State.
11. Endorsement on execution, and execution book to be kept by the clerk.
12. And such book to be indexed.
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SEC. 1. The party in whose favor any judgment is or shall be

rendered, or any order or decree made by any court of record, may have an execution in conformity with such judgment, order or decree.

SEC. 2. Such execution, except in cases hereinafter otherwise provided, shall be a *fieri facias* against the goods, chattels and real estate of the party against whom the judgment, order or decree shall have been rendered.

SEC. 3. Upon the special application of the party entitled to an execution, founded on an affidavit that he has reason to believe that the defendant is secreting, or putting his property out of his hands, in order to cheat and defraud his just creditors, or that he is about to leave the country, or that the plaintiff will be in danger of losing his debt, unless the body of the defendant is taken in execution, a clause shall be inserted therein, commanding that for want of sufficient goods, chattels and real estate, whereon to levy the same, the body of the defendant be taken in execution.

SEC. 4. No execution shall be issued against the body, goods, chattels or real estate of any heir, executor or administrator unless he shall have made himself liable thereto by mismanagement, false pleading or otherwise.

SEC. 5. Such execution, except in cases hereinafter otherwise provided, shall be a *fieri facias* against the goods and chattels and real estate of the party against whom the judgment, order or decree may have been rendered.

SEC. 6. Executions against the estate and body of the defendant shall be in the form or of the effect following :

STATE OF ARKANSAS,
COUNTY OF ———, } ss.

The State of Arkansas to the Sheriff of the County of ——— aforesaid, Greeting.

Whereas A. B. on the — day of ——— in the year of our Lord one thousand eight hundred and —— at our ——— court, hath recovered against C. D. for his debt (or damages, as the case may be) the sum of —— dollars, which were adjudged to him for his debt and damages (or damages alone) together with the sum of ——— for his costs sustained in the suit. You are therefore commanded that of the goods and chattels, lands and tenements of the said C. D. you cause to be made the debt and damages (or damages alone) together with the costs aforesaid, and for want of sufficient goods and chattels and real estate whereon to levy and make the said debt, damages and costs, you are commanded to take the said C. D. if he be found in your

county, and him safely keep so that you have his body before our said court on the —— day of ——— in the year —— to satisfy the debt, damages (or damages alone) and costs aforesaid, and that you then and there certify how you have executed this writ. In testimony whereof, I ———, clerk of the said court, have hereunto set my hand and affixed the seal of such court this —— day of —— A. D. ——,

———— ————, *Clerk.*

SEC. 7. Writs of *fieri facias* shall be in the form and effect prescribed in the preceding section, omitting so much as has relation to the taking of the body of the defendant in execution, and on such writs it shall not be lawful to take the body of the defendant.

SEC. 8. When such execution shall be issued against any person as heir, devisee, executor or administrator, unless he shall have made his estate liable by some means, the officer to whom the same shall be directed shall be commanded only that of the goods and chattels which were of the ancestor, testator, or intestate, at the time of his death, he cause to be made the debt, damages and costs : and if sufficient goods and chattels cannot be found in his county, when of the real estate which was of the deceased at the time of his death, he cause to be made the debt, damages and costs, or sum of money in such execution specified.

SEC. 9. Executions issued out of any court of record, shall be made returnable on the second day of the next term of said court thereafter, unless the plaintiff or the person for whose use the suit was brought, shall otherwise direct, when it shall be the duty of the clerk issuing the same, to make it returnable on the second day of the second term thereafter.

SEC. 10. Executions issued upon any judgment, order or decree rendered in any court of record, may be directed to and executed in any county in this State, without first procuring an order of the court for that purpose.

SEC. 11. Each clerk of the several courts of record in this State shall endorse upon every execution by him issued, the debt, damages and costs (or damages) to be recovered, before the delivery of such execution to the officer by whom it is to be executed : and he shall keep a well bound book, in which he shall enter an abstract of all executions issued by him, or out of his office, showing the date of such execution, the names of the parties, amount of debt, damages and costs, to what officer and county directed, the return, if any, and a reference to the book and page wherein the judgment, order or decree whereon such execution issued is entered.

SEC. 12. Every such clerk shall moreover keep a regular index, in alphabetical order, to such abstract of executions, both by the names of the plaintiffs and defendants therein.

SEC. 13. If any person who shall be taken by virtue of any execution, or committed thereon, shall pay the full amount of money in such execution specified, and costs, or if he shall pay a part thereof, and surrender and deliver to the officer property liable to execution, sufficient to satisfy such execution, then such officer shall discharge him from custody, and dispose of the money and property by him received, in like manner and with the same effect, as if such execution had originally been against the goods, chattels and real estate of such person.

SEC. 14. If by the sale of property so surrendered, there shall not be sufficient to satisfy such execution, the person at whose suit such writ was sued out, may issue a new execution on said judgment, order or decree, as if the body of the defendant had never been taken in execution.

SEC. 15. If any person, or his attorney, in whose favor any execution may have been issued, on any judgment, order or decree, against the body of the defendant, shall release such defendant from prison, or cause him to be discharged from the custody of the officer, such release or discharge shall not operate as a release of the debt, or in any manner affect the judgment, order or decree; but such person may at any time sue out a new execution on such judgment, order or decree, in the same manner as if the defendant had never been taken in execution.

SEC. 16. If any person taken in execution shall die in prison, or while in the custody of the officer, such death shall not be construed to be a satisfaction of the debt.

SEC. 17. The two preceding sections shall also apply to executions issued by justices of the peace.

SEC. 18. If any person taken in execution, or committed to prison thereon, escape by any means whatever, the person at whose suit such person was taken or charged in execution at the time of his escape, may retake such prisoner by a new execution on the judgment, order, or decree.

SEC. 19. The following property only shall be exempt from execution when owned by any person other than the head of a family. First, the wearing apparel of such person, except watches. Second,

the necessary tools and implements of trade of a mechanic whilst carrying on his trade.

SEC. 20. The following property, when owned by a married man with a family, shall be exempt from execution: First, one horse, mule, or yoke of oxen, one cow and calf, one plough, one axe, one hoe, and one set of plough gears, if the person against whom any execution may be issued is a farmer. Second, the spinning wheels and cards, one loom and apparatus necessary for manufacturing cloth in a private family. Third, all the spun yarn, thread and cloth, manufactured for family use. Fourth, any quantity of hemp, flax, cotton and wool, not exceeding twentyfive pounds. Fifth, all wearing apparel of the family, two beds, with the usual bedding, and such other household and kitchen furniture as may be necessary for the family, agreeably to an inventory thereof to be returned on oath with the execution by the officer whose duty it may be to levy the same. Sixth, the necessary tools and implements of trade of any mechanic while carrying on his trade. Seventh, all arms and military equipments required by law to be kept. Eighth, all such provisions as may be on hand for family use.

SEC. 21. The preceding section shall not be construed to affect any contract made before the passage of this act, so as to exempt from execution any property not exempt by the laws now in force.

SEC. 22. The property of a female whether real or personal, and whether acquired before or after marriage in her own right, shall not be sold to pay the debts of her husband contracted or damages incurred by him before marriage.

SEC. 23. The following described property shall be liable to be seized and sold under any execution upon any judgment, order or decree of a court of record: First, all goods and chattels not hereinafter exempted. Second, all improvements on the public lands of the United States. Third, all slaves, and the rights and shares in the stock of any bank, insurance company, or other incorporation. Fourth, any current gold and silver coin, which shall be returned as so much money collected, without exposing the same to sale. Fifth, any bill or other evidence of debt issued by any moneyed orporation of this State or any other State, belonging to any person against whom an execution shall be issued, at the time such writ shall be delivered to the officer to be executed, or at any time thereafter. Sixth, all real estate, whether patented or not, whereof the defendant or any person for his use, was seized in law or equity on the day of rendition of the

judgment, order or decree, whereon execution issued, or at any time thereafter.

SEC. 24. No execution shall be a lien on the property in any slaves, goods or chattels, or the rights or shares in any stock, or on any real estate, to which the lien of the judgment, order or decree does not extend, or has been determined, but from the time such writ shall be delivered to the officer in the proper county to be executed.

SEC. 25. Every sheriff or other officer to whom any execution may be delivered, shall endorse thereon, the hour, day of the month and year when it came to his hands; and if two or more writs of execution come to the hands of the sheriff or other officer the same day, that which he first received shall have priority over the others, and be executed accordingly.

SEC. 26. When an execution shall be issued against any shares or stock in any bank, insurance company, or other corporation, it shall be the duty of the cashier, secretary or chief clerk thereof, upon the request of the officer having such execution, to furnish him with a certificate under his hand, stating the number of rights or shares the defendant holds in such bank, company or incorporation, with the incumbrances thereon.

SEC. 27. The officer obtaining such information, may make a levy of such execution on such rights or shares by leaving a true copy of such writ with the cashier, secretary, or chief clerk, and if there be none, then with some other officer of such bank, company, or corporation with the certificate of the officer making such levy, that he levies upon and takes such rights or shares to satisfy such execution.

SEC. 28. The person against whom any execution may be issued may select what property, real or personal, shall be sold to satisfy the same: and if he give to the officer a list of the property so selected, sufficient to satisfy such execution, the officer shall levy upon such property and no other, if it be sufficient in his opinion to satisfy such execution, and if not, then upon such additional property as shall be sufficient.

SEC. 29. When any personal property, or any rights or shares in any bank, company or corporation, or other effects, shall be seized by virtue of any execution, and any person other than the person against whom such execution is issued, shall claim such property or any part thereof, and shall give notice thereof in writing to the sheriff, such sheriff or other officer may summon a jury to determine the right

of property, giving at least five days' notice of the time and place of holding such inquisition to the plaintiff in the execution or his attorney.

SEC. 30. The sheriff, at the request of either party, or at his own instance, may summon witnesses and compel them to attend and give testimony, and may administer the necessary oaths to jurors and witnesses; and the verdict or inquisition of the jury being rendered in writing, and signed by the jurors, shall be a full indemnity to such officer in proceeding to sell such property when the right has been decided against the claimant.

SEC. 31. The sheriff, witnesses and jurors shall be allowed the like fees as for similar services in the circuit court.

SEC. 32. When the verdict or inquisition shall be against the claimant, he shall pay all costs attending the inquest, and when found for him, the plaintiff in the execution shall pay such costs: and the sheriff may levy all such costs upon the goods and chattels of the party made liable to pay them, as on execution.

SEC. 33. Notwithstanding the jury in the trial of the right of property may have found a verdict or inquisition in favor of the claimant, if the plaintiff in the execution shall sufficiently indemnify the sheriff, he shall proceed to sell such property, in the same manner as if a jury had returned a verdict or inquisition against the claimant.

SEC. 34. When the execution shall be levied on real estate, the officer levying the same shall divide such property, if susceptible of a division, and sell so much thereof as will be sufficient to satisfy such execution, unless the defendant in any execution shall desire the whole of any tract or lot of land to be sold together, in which case it shall be sold accordingly.

SEC. 35. The person whose goods, chattels and real estate are taken in execution, may select what part thereof shall be first sold; and if he shall deliver to the officer having charge thereof a statement in writing of such selection three days before the day appointed for the sale, stating specifically what goods, chattels and real estate he desires to be first sold, and so on until the execution be satisfied, the officer shall proceed according to such selection until sufficient shall be sold to satisfy the amount in the execution specified, together with costs.

SEC. 36. No goods and chattels or other personal effects, seized and taken by virtue of any execution, shall be sold until the officer making the sale shall have given at least ten days' notice of the time and place of sale and property to be sold, by at least four advertisements, put up in public places in the townships in which the sale is to

be made, and one at some public place in each of the other townships in the county.

SEC. 37. When the sheriff or other officer charged with the service of any execution, shall levy it upon personal property, the defendant may retain possession thereof until the day of sale, by giving bond in favor of the plaintiff, with sufficient security, to be approved by the officer, in double the value of such property, conditioned for the delivery of the property to the officer at the time and place of sale to be named in such condition.

SEC. 38. If the property be not delivered according to the condition of the bond, the levy shall remain a lien upon the property taken for the satisfaction of the judgment, into whose possession soever the same may have passed.

SEC. 39. When the condition of the bond shall be broken as mentioned in the preceding section, the officer may seize the same property wherever it may be found, or any other property of the defendant subject to the execution, and sell the same, if personal property, on five days' notice, to satisfy the execution.

SEC. 40. If the condition of the bond be broken, and the execution be returned unsatisfied, the defendant and his securities shall be deemed to have notice of the facts, and the plaintiff without further notice may on the return day of the execution, or on any subsequent day of the term at which such execution is returned, move the court for judgment on the bond against the defendant and his sureties, or any of them, or the plaintiff may at his option bring an ordinary suit on the bond.

SEC. 41. If any controversy arise on the motion, it shall be heard and determined in a summary manner, without the form of pleading, and unless the demand be avoided, judgment shall be rendered thereon without delay, according to the circumstances, as follows: if the value of the property so levied on, and not delivered at the day of sale, be less than the amount in such execution specified, judgment shall be rendered for the value of the property delivered, together with twenty per centum damages for the delay, and costs in both cases.

SEC. 42. If the value of the property so levied on and not delivered at the day of sale, exceed the amount in the execution specified, judgment shall be rendered for the amount of the execution, together with ten per cent. damages for the delay and costs.

SEC. 43. No second delivery bond shall be taken in behalf of a

defendant so failing to comply with the first, nor shall any such bond be taken of a security upon a judgment founded on such bond.

SEC. 44. Every delivery bond shall be returned with the execution, and if the officer fail to deliver the same, or the bond be adjudged insufficient at the return term of the execution, he shall stand as surety for the defendant for the delivery of the property of the defendant, and may be proceeded against as such.

SEC. 45. In order to ascertain the value of any personal property levied on by virtue of any execution, it shall be the duty of the sheriff or other officer, at the time he makes levy, to call to his assistance two respectable householders, to inventory and value such property under oath, and such inventory shall be attached to and be returned with the execution.

SEC. 46. The nine preceding sections shall apply to justices of the peace, and executions issued by them so far as they are applicable.

SEC. 47. When real estate, or slaves, or either, shall be taken in execution by any officer, it shall be his duty to expose the same to sale, at the court house door, on the first day of the circuit court of the county in which the same is situated, having previously given twenty days' notice of the time and place of sale, by at least three advertisements put up in the most public places in each township of such county, or by advertisement in some newspaper printed in the county.

SEC. 48. All property taken in execution by any officer, shall be exposed to sale on the day for which it was advertised, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, publicly, by auction, for ready money, and the highest bidder shall be the purchaser.

SEC. 49. If any person shall refuse to pay the amount bid for any property struck off to him, the officer making the sale may again sell such property to the highest bidder, and if any loss shall be occasioned thereby, the officer may recover such loss by motion before any court or justice of the peace, if the same shall not exceed his jurisdiction.

SEC. 50. Such court or justice shall proceed in a summary manner, and give judgment and award execution therefor forthwith, and the same proceedings may be had against any subsequent purchaser, who shall refuse to pay, and the officer may forever thereafter refuse the bid of the person so refusing to pay for property purchased by him.

SEC. 51. No officer to whom any execution may be directed, or any of his deputies, or any person for them, shall purchase any goods

and chattels, real estate, slaves or other effects, at any sale made by virtue of any such execution; and all purchases so made shall be void.

SEC. 52. When the purchaser of any goods and chattels or slaves shall pay the purchase money, the officer selling the same shall deliver him such property, and, if desired, shall execute an instrument in writing at the expense of the purchaser, testifying the sale and payment of the purchase money, and conveying to such purchaser all the right, title and interest which the debtor had in and to the property sold, on the day the execution was delivered.

SEC. 53. When any rights or shares in any bank, company or corporation shall be sold, the officer making such sale shall execute an instrument in writing, to be drawn at the expense of the purchaser, reciting the sale, and payment of the consideration, and conveying to the purchaser all the right, title and interest which the defendant had in and to such rights and shares, and shall also leave with the cashier, secretary, chief clerk, or, if there be none, then with any other officer of such bank, company or corporation, a copy of the execution and his return thereto; and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such company, as such debtor was entitled to.

SEC. 54. The officer who shall sell any real estate, or lease of lands for more than three years, shall make the purchaser a deed, to be paid for by the purchaser, reciting the names of the parties to the execution, the date when issued, the date of the judgment, order or decree, and other particulars as recited in the execution; also a description of the time, place and manner of sale; which recital shall be received in evidence of the facts therein stated.

SEC. 55. The officer who shall sell any improvement on the public lands of the United States shall, at the expense of the purchaser, execute an instrument in writing, reciting the sale, and payment of the purchase money, describing the improvements, and conveying to the purchaser all the right, title, interest and claim, that the debtor had in such improvement at the time execution was levied thereon.

SEC. 56. Every officer executing any deed for land, tenements and hereditaments sold under execution, shall acknowledge the same before the circuit court of the county in which the estate is situate; but if he die or leave the State, resign or be removed from office before making such acknowledgment, such deed may be proved before such court as other deeds.

SEC. 57. The clerk of such court shall endorse upon such deed a

certificate of the acknowledgment or proof, under the seal of the court, and shall make an entry in the minutes of such court of such acknowledgment, with the names of the parties to the suit, and a description of the property thereby conveyed.

SEC. 58. Every deed so executed, acknowledged or proved, shall be recorded as other conveyances of land, and thereafter such deed or a copy thereof, or of the record certified by the recorder, shall be received in any court in this State, without further proof of the execution thereof.

SEC. 59. Where an officer shall have levied upon any goods and chattels, real estate, slaves or other effects, by virtue of any execution, and the term of service of such officer shall expire and be determined before or after the sale thereof, and before the purchaser shall have obtained a deed therefor, such officer shall nevertheless have power to do and perform all things in relation to such execution, and the sale of such property, and in making and acknowledging a deed to the purchaser, to all intents and purposes, as if his term of service had not expired; and he and his securities shall be subject to the like penalties, actions, proceedings and judgments for neglect, misconduct or failure therein, as if he had still continued in office.

SEC. 60. When any officer shall die or be removed from office, or otherwise disqualified from acting, after having taken in execution any goods and chattels, real estate, shares or other effects, and before sale thereof, the sheriff or coroner then in office shall proceed thereon, and do and perform all things remaining to be done and performed in relation to such execution, and the sale of such property, and in making and executing deeds and conveyances therefor, in the same manner and with the like effect as the officer so deceased, removed from office or disqualified could have done.

SEC. 61. When any officer shall die, be removed from office or disqualified, after the sale of any property, and before executing a conveyance therefor, the purchaser may petition the court out of which the execution issued, stating the facts, and if he satisfy the court that the purchase money has been paid, the court shall order the sheriff then in office to execute and acknowledge a deed to the purchaser, reciting the facts, which deed shall be executed accordingly, and shall have the same effect to all intents and purposes as if made by the officer so deceased, removed from office or disqualified.

SEC. 62. If any officer, to whom any execution shall be delivered, shall neglect or refuse to execute or levy the same according to law,

or shall take in execution any property, or if any property be delivered to him by any person against whom an execution may have been issued, and such officer shall neglect or refuse to make sale of the property so delivered according to law, or if any such officer shall not return any such execution on or before the return day therein specified, or shall make a false return thereof, or, after having taken the defendant's body in execution, shall permit him to escape, and shall not have his body according to the command of the writ, then, and in any of the cases aforesaid, each officer shall be liable and bound to pay the whole amount of money in such execution specified, or thereon endorsed, and directed to be levied; and it shall be the duty of the clerk of the court from which any execution may be issued, to endorse thereon the time when such execution was returned.

SEC. 63. If such officer shall not, on the return of any execution, or at the time the same ought to be returned, have the money which he may have become liable to pay as aforesaid, and pay the same over according to the command of the writ, any person aggrieved thereby may have his action against the officer and his securities, upon his official bond, or may have his remedy by action on the case against such officer and his securities.

SEC. 64. If any officer sell any property under any execution, whether he receive payment therefor or not, or shall make the money in any execution specified or thereon endorsed, and directed to be levied, or on any part thereof, and shall not have the amount of such sales, or the money so made, before the court, and pay over the same according to law, he shall be liable to pay the whole amount of such sale or money by him made to the person entitled thereto, with lawful interest thereon, and damages in addition at the rate of ten per centum per month, to be computed from the time when the execution is made returnable, until the whole be paid, to be recovered in an action against such officer and his securities on his official bond; or the party aggrieved may proceed against such officer by motion before the court in which such writ is returnable, in a summary manner, two days' previous notice of such intended motion being given, on which motion the court shall render judgment for the amount which ought to have been paid, with interest and damages as aforesaid, and award execution thereon.

SEC. 65. The proceeding against any officer by motion in the manner prescribed in the preceding section, shall not be construed to exempt the securities of such officer from liability.

SEC. 66. It shall be the duty of every officer to whom any execution may be directed, issued on any judgment recovered on motion according to the provisions of the sixtyfourth section of this act, to execute the same within fifteen days after it shall be delivered to him; and such officer shall be subject to the like penalties and liabilities for every default therein as on other executions.

SEC. 67. If any sheriff or other officer to whom any execution may be legally directed, shall refuse to receive such execution and execute the same according to law, such officer shall be deemed guilty of a misdemeanor in office, and shall also be liable to the party aggrieved for the amount of money specified in such execution, to be recovered against him and his securities on his official bond.

SEC. 68. If on the sale of any real estate, or any improvement on the public lands of the United States, by any sheriff or other officer under any execution, the defendant or his lessee shall refuse to give the purchaser possession of such real estate or improvement, it shall be the duty of the circuit court on the application of the purchaser, to make an order directing the sheriff or other officer to put the purchaser in possession of such real estate or improvement; which order shall be executed by such officer without delay; and if necessary he may call to his assistance the power of the county in order to carry such order into effect.

SEC. 69. It shall be the duty of the clerk of the circuit court to make out and deliver to the sheriff or other officer a certified copy of such order, which shall be a sufficient authority for such officer to act.

SEC. 70. If any person against whom any execution may have been issued, shall apply to the judge of the court out of which the execution or order of sale may have been issued, by petition verified by affidavit, setting forth good cause why such execution ought to be stayed, set aside or quashed, reasonable notice of such intended application being previously given to the adverse party, his agent or attorney of record, such judge shall thereupon hear the complaint, and if it shall appear that such execution ought to be stayed, set aside or quashed, and the petitioner shall enter into a recognizance with sufficient security in such sum as may be reasonable, to be taken and approved by such judge, conditioned that if such application be determined against such petitioner he will pay the debt, damages and costs, to be recovered by such execution or order of sale, or surrender in execution his property liable to be seized, taken and sold by such execution or order of sale, or that the sureties will do it for him, then such judge

shall make an order for the stay of such execution or order of sale as aforesaid, but all the property real and personal bound by such execution or order of sale, shall remain bound as if no such stay had been granted.

SEC. 71. On the presentation of a certified copy of such order to the officer having charge of any such execution or order of sale, he shall immediately return the same without further action.

SEC. 72. Such judge shall return such petition and proceedings thereon, duly certified, to the court out of which the execution was issued, or the order of sale made returnable, and the clerk of such court shall enter the same upon his docket, and the court shall hear and determine the same in a summary manner, according to right and justice, and may award a perpetual stay of, or quash such execution or order of sale, or may order the execution or order of sale to be enforced.

SEC. 73. Every unexpired lease of lands shall be subject to execution and s aleas real estate ; but shall not be subject to sale under any execution issued by a justice of the peace, neither shall an improvement on public lands be sold under an execution issued by a justice of the peace.

SEC. 74. The term "real estate" as used in this act, shall be construed to include all estate and interest in lands, tenements and hereditaments.

[Approved: March 3, 1838.]

CHAPTER 61.

FEES.

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21. Auditor and treasurer.
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23. Masters in chancery.
24. Jurors.
25. Witnesses.
26. Witnesses' accounts, authentication of.
27. Each figure to be counted as one word.
28. What fees, where none are fixed by law.
29. Process, how to be returned, to secure fee.
30. Officers to set up table of fees, and penalty for neglect.

SECTION
31. Persons entitled to fees, may make out fee bills at end of term.
32. Such fee bill to be examined, certified, and delivered to sheriff.
33. How to be collected.
34. Penalty for sheriff refusing to collect such fees.
35. Fees paid by successful party, how to be collected, &c.
36. Clerks to endorse fee bills on executions, and enter them in book.
37. Clerk to deliver copy of such entry to person charged.
38. Such book evidence in action for taking illegal fees.
39. Penalty for taking illegal fees.

SEC. 1. Such fees shall be allowed the officers hereinafter named, for their services rendered in discharging the duties imposed upon them by law, as are herein provided; and such officers may lawfully charge, demand, and receive the same.

SEC. 2. The several attorneys for the State shall be allowed as follows:

	Dols.	Cts.
For each judgment obtained, on plaint, information, or otherwise, in the name of the State or any county,	5	00
For each conviction upon indictment or presentment for a misdemeanor or breach of the peace,	10	00
For each conviction on an indictment for any felony not capital,	15	00
For each conviction upon indictment for gaming,	30	00
For each conviction of homicide, other than capital,	30	00
For each conviction in capital cases,	30	00

But no fees shall be allowed in any of the above cases, unless the same shall be made out of the estate of the defendant, except on convictions for murder, which shall be paid by the county, if sufficient property belonging to the defendant cannot be found for that purpose.

SEC. 3. The clerks of the county courts, respectively, shall be allowed fees for their services as follows:

	Dols.	Cts.
For each order to erect or repair a bridge,		25
For making out and issuing an order for the appointment of a commissioner to erect or repair any bridge,		37½
For filing bond of any contractor,		06¼

	Dols.	Cts.
For reading and filing every petition, and recording the order made thereon, to be paid by the petitioner,		50
For copying petitions, orders, and all other papers pertaining thereto, for every hundred words, to be paid by the petitioner,		10
For each certificate of the appointment of road viewer or reviewer,		25
For reading and filing a remonstrance against any road or bridge, to be paid by complainants,		50
For issuing a precept of inquiry of damages in the case of roads, to be paid by the applicant,		50
For reading and filing return of inquisition, to be paid by the applicant,		50
For entering every order for the appointment of the justice of the peace to apportion hands to work on roads, and copy of the same,		37
For entering the appointment of each overseer of roads,		25
For each notice to overseer and justices of the peace,		12½
For taking the bond of each constable, and filing the same, to be paid by the constable,	1	00
For entering each order concerning the erection or repairing of any county building,		25
For entering the appointment of any person to superintend the erecting or repairing of any county building, and issuing a certificate of appointment,		50
For entering every order for ascertaining any county line, and a copy thereof,		50
For entering every order approving any return of the survey of a county line,		25
For recording return of survey of county line, if approved,		25
For entering every order for the appointment of judges of election, and issuing certificates therefor, for each township,		50
For entering every order fixing the place of holding elections,		25
For entering every order for the support of a poor person,		25
For each order establishing prison bounds,		25
For all services required to be performed by him in relation to the laying out of a township, or altering township lines, and certifying the same,		75
For trying and sealing any weight or measure, to be paid by the applicant,		25

	Dols.	Cts.
For taking each collector's bond, to be paid by the collector,	1	00
For making out tax list, for every one hundred words,		10
For taking, filing and safe keeping of any bond required by law to be filed in his office, not otherwise provided for, to be paid by applicant,		50
For making settlement of each account with the county,		25
For each allowance against the county, and a warrant therefor,		12½
For all services attending licensing a ferry, pedler, tavern, or grocery, to be paid by the applicant,	1	00
For issuing each writ, receiving, filing and docketing return,		50
For recording mark or brand,		25
For filing every paper not heretofore specified,		06¼
For administering each oath,		06¼
For swearing and entering each jury,		50
For copies of record and papers not herein before provided, for every one hundred words,		10
For taking and entering verdict of jury,		25
For entering judgment,		25
For every rule or order not herein before specified,		20
For commission to take depositions,	1	00
For entering all appeals, except from the assessment books,		25
For every certificate and seal not herein before provided for,		50
For every subpœna,		50
For recording every paper, not herein before provided for, for each one hundred words,		10
For entering on record appraised value of stray, and filing bond and appraisement,		50

SEC. 4. The clerks of the court of probate shall be allowed fees for probate matters, and all business relating to the settlement of executors', administrators' and guardians' accounts, as follows:

For granting letters of administration, or testamentary, recording the same, administering oaths, and all things relating thereto,	2	00
For entering an order of appointment of guardian, and certificate thereof,		50
For taking guardian bond,		50
For every order relating to administrators, executors, or guardians,		25

	Dols.	Cts.
For copying any record or paper not herein before provided for, for every one hundred words,		10
For taking bonds of heirs to refund,		50
For entering verdict or judgment,		25
For taking new bond of executor, administrator, or guardian,		50
For recording any instrument of writing, for each one hundred words,		10
For issuing citation to administrator, executor, or guardian,		75
For taking proof of any will or codicil,	1	00
For recording will or codicil, and proof thereof, for each one hundred words,		10
For every certificate and seal,		50
For issuing each subpœna,		50
For recording each settlement of administrator, executor, or guardian, for each one hundred words,		10
For filing exceptions to executor's, administrator's or guardian's account, and making all orders in relation thereto,		50
For putting up advertisements of settlement of executors, administrators, or guardians,		50

SEC. 5. The clerks of circuit courts shall be allowed fees as follows:

For filing a declaration, plea, petition, demurrer, affidavit, or other paper in a cause,		10
For drawing and sealing every writ, original or judicial,	1	00
For docketing each cause,		$12\frac{1}{2}$
For entering each appearance,		20
For taking and entering a recognizance of bail, in civil or criminal cases,		50
For every bond in a case, including bonds for the payment of costs, written by the clerk,		50
If written by the party,		25
For entering surrender of principal by bail,		25
For filing jailer's receipt, or writing exoneration,		25
For entering an order cancelling bail bond, or discharging a recognizance,		25
For every issue joined,		25
For every motion or rule,		25
For each continuance,		25
For every subpœna,		50

	Dols.	Cst.
For every rule of reference, to show cause, to take depositions, or give security for costs,		25
For copy of same, without seal, if demanded,		25
For commission to take depositions,	1	00
For copy of interrogatories thereto annexed, if any, every one hundred words,		12½
For entering every order not otherwise provided for,		25
For entering a retraxit, discontinuance, or nonsuit,		50
For entering each judgment,		50
For swearing and entering each jury,		50
For attending to strike a jury, and furnishing each party a copy thereof,	1	00
For taking and entering a general verdict of a jury,		25
For taking and entering a special verdict, for every ten words,		01
For a trial before the court, without a jury,		50
For entering report of arbitrators,		25
For entering judgment upon any issue of law or fact, or on the report of arbitrators,		37½
For each submission,		25
For entering appeal from inferior courts, or justice of the peace,		50
For entering appeal to supreme court,		50
For taking appeal bond or recognizance,		50
For a writ of attachment,	1	00
For a writ of mandamus,	1	00
For administering each oath,		06¼
For entering satisfaction of record,		25
For transcribing each judgment on the judgment docket,		50
For copies of bonds and papers, for every ten words,		01
For each writ of ad quod damnum,	1	00
For entering each inquest, and judgment thereon,		50
For bringing a particular record into court,		25
For entering and taking the acknowledgment of every sheriff's deed,	1	00
For taking acknowledgment of a deed in other cases,		50
For certificate and seal,		50
For each scire facias,	1	00
For a venire to summon grand or special jury,		75
For each indictment returned into court,		50

	Dols.	Cts.
For each search for the first year,		25
" " for each year thereafter,		12½
For issuing each execution,	1	00
For registering each attorney,	1	00

SEC. 6. The clerks of the circuit court shall be allowed fees for their services in chancery, as follows:

For filing a bill, petition, answer, plea, demurrer, or replication, in a case,		20
For drawing, sealing, writing and issuing writ original, or filing the same,	1	00
For each appearance,		20
For docketing each case,		20
For taking every bond in a case,		50
For every issue joined,		25
For entering every motion or rule,		20
For every continuance of a cause,		25
For every subpœna,		50
For every rule of reference, to show cause, to take depositions, or give security for costs,		25
For every commission to take depositions,	1	00
For every copy of interrogatories, for every ten words,		01
For swearing and entering each jury,		50
For taking and entering verdict,		50
For every trial of issue of fact before the court, without a jury,		50
For entering an interlocutory decree,	1	00
For entering a final decree,	1	50
For entering any order not otherwise provided for,		50
For entering report of master,		50
For filing exceptions to bill, answer, or master's report,		20
For filing an affidavit, or other paper, in a cause,		10
For administering each oath,		06¼
For entering each appeal,		50
For taking appeal bond or recognizance,		50
For a writ of ne exeat, or injunction,	1	50
For every execution,	1	00
For an attachment, other than against a witness or juror,	1	00
For an attachment against a witness or juror,		50
For process of sequestration,	1	00

	Dols.	Cts.
For copies of record, and papers, for every ten words,		01
For bringing a particular record into court,		25
For certificate and seal,		50

And for all other services by the said clerks in chancery, they shall be allowed the same fees as are allowed, or may be allowed, to clerks of the circuit courts for similar services at law.

SEC. 7. The clerk of the supreme court shall be allowed fees for his services as follows :

For each day the court is in session, to be paid out of the contingent fund of the supreme court, on the certificate of the chief justice,	3	00
For each writ of error,	1	50
For a supersedeas,		50
For any other original writ,	1	50
For taking a bond or recognizance, or issuing a writ of error,	1	00
For issuing a writ of habeas corpus, quo warranto, or mandamus,	1	50
For filing transcript, and docketing case,		75
For filing assignment of errors, or joinder,		20
For recording the opinion of the court, for each one hundred words,		15
For certified copies of the opinion of the court, for each one hundred words,		10
For certified copies of any record, or brief of counsel, for each one hundred words,		10
For filing each paper in a cause,		20
For registering each attorney of the court,	5	00

For every other service to be performed by said clerk, he shall be allowed the like fees as are allowed to the clerks of the circuit courts, for similar services.

SEC. 8. Sheriffs shall be allowed for their fees as follows :

For serving every capias, summons, scire facias, or attachment, for each defendant and garnishee,	1	00
For taking and returning every bail or delivery bond,		75
For serving a writ of garnishment on each garnishee,	1	00
For serving a writ of ne exeat or injunction on each defendant,	1	50
For serving habere facias possessionem, or sequestration,	2	00
For serving every writ of execution,	1	00
For making, executing, and delivering, a sheriff's deed, to be paid for by purchaser,	2	50

	Dols.	Cts.
For every return of non est on a writ original, or judicial process,		50
For return of nulla bona,		50
For executing a writ of inquiry,	1	50
For summoning a grand jury,	5	00
For summoning a special jury, to try forcible entry and detainer, or to assess damages, on special venire,	5	00
For each special struck jury,	5	00
For summoning each witness,		50
For each non est on subpœna,		25
For serving every notice or rule of court, notice to take depositions, or citation to executor, administrator, or guardian,		50
For committing any person to jail on civil process,		50
For admitting any person to the prison bounds,		75
For discharging a commitment in civil cases,		50
For attending each court per day,	2	00
For calling every action at each term,		12½
For calling each party at each term,		12½
For calling each jury,		50
For calling each witness,		10
For committing a criminal or other person to jail,		75
For furnishing a prisoner, per day,		50
For every trial in a civil or criminal case, or confession in open court,	1	00
For every trial in a capital cause,	3	00
For executing sentence of whipping or pillory,	3	00
For executing each death warrant,	15	00
For mileage in serving each writ, process, notice, subpœna, or rule, except in county matters, for each mile circular,		05
For advertising goods or lands for sale,		75
For returning each execution,	1	00
For advertising election for each township, such sum as may be allowed by the county court, not to exceed,	1	50
For serving each order or rule of the county court, (but no mileage,)		50
For summoning and swearing each jury to try the right of property, and taking verdict,	1	50
Turnkey's fees on commitment of a person for debt,		50

For the safe keeping, supporting, and removing live stock, and other property seized under legal process, such fees as the court out of

which the process issued, shall deem reasonable. For commissions for receiving and paying moneys on execution or process, where lands or goods have been taken in custody, advertised and sold, four per centum on the first two hundred dollars, and two per centum on all sums above two hundred dollars, and half of such commission where the money is paid to the sheriff without seizure, or where the lands and goods seized or taken shall not be sold.

SEC. 9. No sheriff shall be allowed mileage for serving any writ, execution, or process, from the supreme court, unless the court shall, for special reasons, order the attendance of any such sheriff at such court, in which case mileage shall be allowed for going and returning.

SEC. 10. All moneys collected by sheriffs shall be paid to the person entitled to receive the same, or his order, or to his attorney of record.

SEC. 11. If more persons than one are named in any writ, process, or subpœna, the mileage in serving the same shall be computed from the court house to the place of serving which shall be the most remote, adding thereto the extra travel which shall be necessary to serve it on the others.

SEC. 12. Coroners shall be allowed fees for their services as follows:

	Dols.	Cts.
For viewing a dead body in case of inquisition of death,	3	00
For summoning each witness,		50
For each deposition duly taken and returned,		50
For summoning and swearing jury, taking and returning inquisition,	5	00
For taking each recognizance,		50
For arresting any person whom, according to the inquisition or otherwise, he may be bound to arrest,	1	00
For going from his residence to the place of viewing a dead body, and returning, each mile,		5
For each mile travel in arresting any person, and committing such person,		5

Such fees, together with the fees of jurors and witnesses, shall be paid out of the county treasury, as other demands. For performing the duties of sheriff, the coronor shall be entitled to the same fees, for the time being, as are allowed to sheriffs for such services.

SEC. 13. Justices of the peace shall be allowed fees for their services as follows:

For administering each oath,	$6\frac{1}{4}$
For issuing each subpœna,	25

	Dols.	Cts.
For every summons or warrant, in civil or criminal cases,		50
For each attachment,		50
For entering each judgment,		50
For each execution,		50
For entering each appeal, and certified copy thereof,		50
For entering stay of execution, and taking bond,		50
For issuing scire facias,		50
For issuing venire for jury,		37½
For taking acknowledgment of any instrument of writing,		50
For solemnizing a marriage,	2	00
For taking each recognizance, in civil and criminal cases,		50
For certifying depositions, when prepared,		37½
For writing depositions, when required so to do, for each hundred words,		12½
For all services in relation to strays,		50
For issuing warrant to view fences, or assess damages,		37½
For swearing a jury,		25

For attending to the duties of coroner, in holding inquisition, the same fees as are allowed to coroner.

SEC. 14. It shall be the duty of the justices of the peace, in each county of this State, to meet at the court house in their respective counties, on the first day of the first term of the county court to be held after the taking effect of this act, and elect two of their number to assist in holding the county court for said county; and such justices shall, in conjunction with the presiding judge of said court, have power to hold the county courts until the first day of January, eighteen hundred and thirtynine; and at the first term of the county court in each county, after the first day of January in each year, justices shall be elected as aforesaid to assist in holding the county court. Each justice of the peace elected as aforesaid, shall be allowed the sum of two dollars for each day he may be engaged in holding the county court, to be paid out of the county treasury. If either of the justices so elected shall fail to attend on the first day of the term of the county court, the presiding judge of said court shall order the sheriff to summon some other justice to attend and assist in holding such court, and the justice so summoned shall be entitled to the same fees as if he had been elected. Nothing in the provisions of this section shall be so construed as to prevent other justices from assisting in holding the county court.

SEC. 15. The presiding judge of the county court shall be entitled to the sum of four dollars for each and every day he may be engaged

in holding the county court or court of probate in his county, to be paid out of the county treasury.

SEC. 16. Constables shall be allowed for their services the following fees.

	Dols.	Cts.
For serving a warrant in a criminal case, for each defendant,		50
For serving a warrant or summons in a civil case, for each defendant,		50
For summoning and swearing each jury to try the right of property, and taking the verdict,	1	00
For summoning each jury before a justice,		75
For taking a criminal or debtor to jail,		75
For levying each execution,		50
For taking delivery bond,		50
For summoning each witness,		25
For levying a writ of attachment,		75
For every mile necessary travel in executing any process, civil or criminal, within his township,		5

For receiving and keeping property taken on execution, such compensation as may be allowed by the justice from whom the process issued. For collecting and paying over to the plaintiff all sums of money collected, five per centum.

SEC. 17. The county surveyor shall be allowed the following fees for his services:

For each day he may be engaged, either under an order of court, or otherwise,	4	00
For each mile travel from his place of residence to the place where the survey is to be made, and back,		05
For calculating the quantity of land in a tract,		50
For calculating each division of a tract, where the same may have been divided,		50
For making a plat of survey,		25
For recording plat and certificate,		50
For every copy of plat and certificate,		25

SEC. 18. Recorders shall be allowed fees for their services as follows:

For recording every instrument of writing, for each one hundred words,	15
For every certificate and seal,	50
For recording every certificate of marriage,	50
For copy of records, for every one hundred words,	12½

SEC. 19. Notaries public shall be allowed fees for their services as follows:

	Dols.	Cts.
For noting a bill of exchange, or promissory note, for protest,		50
For entering protest of the same,	1	00
For registering protest,		50
For notice to endorser, and other parties, each,		50
For taking each acknowledgment,		50
For each marine protest,	2	00
For other protest to secure insurance,	2	00
For affixing a notarial seal,		50
For copy of record and papers in his office, for each one hundred words,		12½

SEC. 20. The secretary of state shall be allowed fees for his services as follows:

For every certificate to authenticate any instrument of writing to which the seal of his office shall be affixed,	1	00
For all copies of records or other papers in his office, for every one hundred words,		10

But no fees shall be allowed for such services on the business of the State.

SEC. 21. The auditor and treasurer shall receive the following fees, to be paid by the person for whom the services may be rendered, to wit:

To the auditor, for each tract of land forfeited to the State for non-payment of taxes,		25
For making deed for same, when redeemed,	1	00

To the treasurer, the sum of five per centum on all sums received by him for the redemption of lands sold for taxes, to be paid by the party redeeming the same.

SEC. 22. Each assessor shall receive and be entitled to four per centum on the amount of his assessment list. Each collector shall be entitled to receive the sum of eight per centum for the amount of taxes collected by him for county purposes.

SEC. 23. The master in chancery shall be allowed a reasonable compensation for any service that may be required of him; the amount of such compensation to be audited and allowed by the court requiring the services; and for taking depositions, the same fees as are allowed to justices of the peace.

SEC. 24. Jurors shall be allowed fees for their services as follows:

	Dols	Cts.
For each grand juror, per day,	1	00
For each juror attending a view, inquest, or on the execution of a writ of ad quod damnum, per day,		75
For each verdict in a civil case, to be paid on the rendering of the verdict, and taxed as other costs,	3	00
And grand jurors shall be allowed for each circular mile travelled in attending court,		05

SEC. 25. Witnesses shall be allowed fees for their services as follows:

For attending before any court of record, arbitration, auditor, commissioner, or other person, for each day, in civil cases,	1	00
For attending on each criminal case,		75
For attending before a justice of the peace,		50
For travelling allowance in each of the above cases, for each mile he shall necessarily travel in going to and returning from the place of trial,		05

Witnesses summoned and attending on the part of the State, in more cases than one, when the cost shall be required to be paid by the county, shall only be entitled to fees as for attendance in one case.

SEC. 26. Every account for the attendance of any witness shall be sworn to, and shall state that he was summoned to attend as a witness in the cause in which the charge is made, the number of days he attended, and the number of miles he had to travel in consequence of the summons.

SEC. 27. In all cases where fees are allowed by law, according to the number of words, each figure shall be counted as one word.

SEC. 28. In all cases where any officer is required to perform any duty for which no fees are allowed by any law, he shall be entitled to receive such fees as would be allowed for similar services.

SEC. 29. Each sheriff, coroner, and constable, on the return made by him on any writ, or other process, shall state at length the time when, and place where, such writ or process was served, and how; otherwise such officer shall not be entitled to demand or receive any fee for the service or execution of the same.

SEC. 30. Every officer to whom fees are allowed by law, shall cause to be set up in some conspicuous place in his office, and there constantly keep, a fair table of his fees herein before prescribed, and shall forfeit to him who will sue for the same, two dollars for every

day he may neglect to keep such table set up, to be recovered by action of debt.

SEC. 31. All officers or witnessés entitled to fees by this law, for services rendered in any suit, matter, or controversy, depending in any court of record, may make out fee bills for such services, at the end of each term of the court wherein the same is pending, charging the party at whose instance the services were rendered.

SEC. 32. Such fee bills shall be examined by the clerk of the court in which the services were rendered, and, if found correct, the clerk shall certify the fee bills, and deliver the same to the sheriff of the proper county, to be by him collected.

SEC. 33. If the person chargeable shall neglect or refuse to pay the amount of any fee bill to the sheriff, within fifteen days after the same shall have been demanded, the sheriff shall and may levy such fee bill, and the amount claimed thereon, on the goods and chattels of such person, and with the like effect as on execution.

SEC. 34. If any sheriff shall neglect or refuse to levy and collect such fees, and pay over the money, when collected, to the person entitled thereto, within sixty days after such fee bill shall have been delivered to him, the court shall, upon motion, enter up judgment for the amount of such fee bill against him, and cause execution to issue thereon.

SEC. 35. If any party to a suit shall pay any fees allowed by this act, before final judgment, and the judgment shall thereafter be rendered in his favor, and costs adjudged to him, the amount so paid shall be taxed and endorsed on the execution and levied aud collected by virtue thereof, for the benefit of such party ; and all fees which shall not be paid, shall be endorsed on the execution, and collected by virtue thereof, for the benefit of the person rendering the service ; or the same may be collected on fee bills, according to the preceding provisions of this act, but only the costs of the prevailing party shall be so taxed on such execution.

SEC. 36. The clerks of the several courts shall endorse on every execution which they shall issue, the fees due to each officer, and any other person ; and shall, at the time of issuing an execution or fee bill, or of recovering any fees due to them by any party or other person, enter, in a book to be kept for that purpose, the several items for which they have charged, in words at full length.

SEC. 37. Every clerk shall deliver to any party or person from

whom any fees are due, on demand, a full and complete copy of the entry made in such book, without any compensation for the same.

SEC. 38. Whenever any suit is instituted against any clerk or other officer, for having asked or taken illegal fees, the book referred to in the two preceding sections, and the entries therein, may be given in evidence on the trial.

SEC. 39. If any officer shall charge, demand, or receive, any more or greater fees for his services than are allowed by law, or shall demand, charge, or receive any such fees, without having performed the services for which the same are charged, such officer, for every such offence, shall forfeit, to the party injured, or against whom the sum may be charged, the amount of fees illegally charged, and five dollars for each item illegally demanded, charged, or received, with costs, to be recovered by action of debt, and shall also be subject to an indictment for extortion.

[Approved and in force: March 3, 1838.]

CHAPTER 62.

FERRIES.

SECTION

1. Upon public navigable streams, to be public.
2. What persons privileged to keep ferries.
3. What lakes declared public navigable streams.
4. No person to keep ferry for pay, without license.
5. From what court license to be obtained, when stream is boundary of a county.
6. What tax or duty for license, where stream is part of boundary of State.
7. Application for license, how made, and when granted.
8. Court to determine what tax shall be paid, and limit thereof.
9. Rates of toll to be made of record, and copy thereof to be given to person licensed.
10. License tax to be paid before license granted, and receipt therefor filed.
11. Bond and security to be given, and condition thereof, before license.
12. License then to be granted, and for what time.

SECTION

13. How person may commence public ferry, when county court not in session, and rates of toll so to be taken.
14. How license thereafter to be granted, and for what time.
15. Penalty for failing to apply for license, &c. after ferry so put in operation, and how recovered.
16. Duties of ferryman as to keeping boats and giving attendance.
17. Penalty for failure to cross person applying, and how recovered.
18. Rates of ferriage to be kept posted up; penalty for failure, and how recovered.
19. Penalty for keeping ferry without license, and how recovered.
20. Execution against ferryman returned *nulla bona, sci. fa.* to issue against his securities; how, and what judgment thereon.
21. How the crossing of a private stream may be made a public ferry.

SEC. 1. All ferries upon or over any public navigable streams in this State, shall be deemed public ferries.

SEC. 2. Every person owning the land fronting on any public navigable stream, shall be entitled to the privilege of keeping a public ferry over or across such navigable stream : if he own the lands on both sides or banks, or if he shall have possession of both sides or banks, by pre-emption or settlement right, he shall be entitled to the sole and exclusive right of ferriage at such place : if he own the lands on one side only, or have possession thereof by pre-emption or settlement right, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, and making the landing and road up said opposite bank, and keeping the same at all times in good repair and condition for ascending and descending.

SEC. 3. All lakes within this State, that have been meandered in making the public surveys of the United States lands, and retained as public property by the United States, shall be deemed public navigable streams within the meaning of this act.

SEC. 4. No person shall keep any ferry over or across any public navigable stream or lake, so as to charge any compensation for crossing the same, without first procuring a license from the county court of the county in which such ferry is situated.

SEC. 5. If any navigable stream or lake shall form a portion of the boundary of any county, so that one bank shall be in one county, and the other in a different county, at the place where it is proposed to erect a ferry, then a license shall be had from the county court for the ferry on their respective banks or shores.

SEC. 6. When a navigable stream makes a part of the boundary line of this State, if any tax or charge shall be assessed or collected by any such adjoining State for the privilege of a ferry landing on the shore or bank of such State from this State, then the same tax or duty shall be assessed and collected for like privilege of landing on the banks or shores of this State.

SEC. 7. Any person wishing to establish a ferry across any navigable stream in this State shall apply to the county court of the county in which such ferry site may be, and on the applicant showing that he is lawfully in possession of such land as the ferry is sought to be established on, and also satisfying the court that the public convenience will be promoted thereby, such court shall grant such license.

SEC. 8. Before any ferry shall be established, the court shall de-

termine what tax shall be paid by such applicant for the privilege of such ferry, which shall not be less than one dollar, nor more than one hundred dollars.

SEC. 9. The court shall state on their record the rates of toll or ferriage which may be demanded for ferrying passengers, carriages, wagons, carts, beasts, and such other property as is usually transported by ferries. The clerk shall make out a copy of such ferriage rates under his official signature, and give to the person procuring such license.

SEC. 10. It shall be the duty of the person applying for a ferry license, when the tax for such ferry privilege shall be fixed by the county court, to pay such assessment to the treasurer of the county, and take his receipt therefor, and cause the same to be filed in the clerk's office of the proper county.

SEC. 11. The applicant for any public ferry shall enter into bond to the county, with sufficient security to be approved of by the court, in such sum as the county court shall require, conditioned that he will faithfully perform, or will cause to be performed, the duties of public ferryman at such ferry, and that he will comply with all the requisitions of the law relating to or governing public ferries.

SEC. 12. Upon the payment of the tax levied by the county court for the privilege of such ferry, and executing the bond required by this act, such county court shall grant a license to such applicant for the term of one year from the date of such license.

SEC. 13. Any person wishing to put into operation any public ferry, and the county court not being in session, may do so by putting up an advertisement at such ferry, stating that he intends to apply to the next county court for a license for such ferry, and he may charge and receive the usual rates of ferriage, until such county court shall meet.

SEC. 14. The county court, in cases where ferries have been put in operation in vacation of such court, by advertisement, shall grant to such person a license at the next term of such court, on his applying for the same, and complying with the provisions of this act, as in cases of other ferries, which shall relate back and be for one year from the time of putting such ferry in operation by advertisement.

SEC. 15. Any person putting a ferry across any navigable stream in operation by advertisement, who shall fail or neglect at the next term of the county court to apply for such license, and in all respects to comply with the orders of the county court in respect thereto, shall,

by notice served on him by order of the county court, be required to appear at their next term, and show cause, if any he can, why he should not be fined: if no sufficient legal reason be shown, he shall be fined by such court in any sum not exceeding thirty dollars, and such proceeding shall be had without the necessity of formal pleadings.

SEC. 16. All ferrymen at the several ferries in this State shall keep a good boat, or boats, if more than one be necessary, in good repair suitable for the stream they are to ferry over, and give ready and due attendance on passengers on all occasions, and shall give the like attendance when wagons or other property is to be transported.

SEC. 17. If any person licensed to keep a public ferry shall, on being tendered his lawful fees, refuse or neglect, without a reasonable cause, to cross any person, his horse or other property usually transported by such ferry; every such ferryman shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action of debt before any justice of the peace for the county in which such ferry is situated, with costs of suit, and the oath of the party delayed shall be sufficient evidence of the facts.

SEC. 18. Every ferryman licensed in this State shall keep a list of the rates of his ferry posted up, (written in a fair hand,) either at the ferry or at the ferry house, for the inspection of all persons. If any ferryman fail or neglect so to do, he shall forfeit and pay the sum of four dollars for every such neglect. Each day that such ferry rates are not so posted up shall constitute a separate offence. Which sum shall be recovered in an action of debt before any justice of the county, one half for the use of the prosecutor, and the other half to the county.

SEC. 19. If any person shall keep any ferry over any navigable stream in this State, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this act in relation to obtaining license, he shall forfeit and pay to every other person having a licensed ferry on the same stream or lake in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be the subject of a separate charge, to be sued for and recovered before any justice of the peace in the county, by action of debt founded on this statute, with costs of prosecution.

SEC. 20. In all cases of recoveries against ferrymen for violations of this act, if, after judgment, execution shall be returned that there are

not goods and chattels of such ferryman, whereon to levy and make the money demanded in such execution, such justice shall issue a scire facias against the securities of such ferryman, and if such securities do not show sufficient reason to the contrary, the justice shall enter judgment against such securities for such amount of debt as may be unsatfied and issue execution therefor, as in other cases.

SEC. 21. Where a public road crosses any private stream which has not been meandered as a navigable stream, the bed of which may belong to any individual, if in the opinion of the county court, the public convenience will be promoted thereby, such court may make an order upon their record to that effect, declaring such crossing to be a public ferry. And when so declared by the county court, such ferry shall be and remain a public ferry during the pleasure of such court, and be subject to all the regulations and restrictions, that are made by this act applicable to public ferries on navigable streams.

[Approved: February 20, 1838.]

CHAPTER 63.

FORCIBLE ENTRY AND DETAINER.

SECTION
1. Entry to be where given by law, and then peaceably.
2. Definition of forcible entry and detainer.
3. Of unlawful detainer.
4. Preceding sections to comprehend terms for years, and all estates.
5. Such offences where cognizable.
6. On complaint in writing, summons to issue
7. Form of summons, and to be endorsed on, or annexed to the complaint.
8. Service of summons.
9. Venire for jury to issue.
10. Form of venire.
11. Number to be completed by sheriff when necessary.
12. Return on summons and venire, how made.

SECTION
13. Plaintiff not appearing, to be nonsuited.
14. Proceedings when defendant fails to appear.
15. Attendance of witnesses, how compelled.
16. Depositions, when and how taken.
17. In what cases read.
18. Oath of jurors.
19. Proof to be made by plaintiff.
20. Judgment, when for plaintiff, and writ of restitution.
21. Form of verdict.
22. Judgment and execution on verdict for defendant.
23. Entry to be made on minutes or docket.
24. One new trial may be granted to each party, and for what cause.
25. Estate or merits of title not to be inquired into.

SECTION
26. Possession for three years pleadable in bar.
27. Action allowed to persons having improvements on public lands, and extent of recovery.
28. Limits of recovery by plaintiff.
29. But persons may lawfully enter, under authority from the United States.
30. Nothing in this act to bar different action.
31. Form of writ of restitution.
32. Appeal granted to circuit court, and trial there to be *de novo*.
33. Judgments in circuit court on appeal, how carried into effect.
34. Appeal bond to be taken, and form of.
35. Appeals within what time prayed for, and bond given.
36. Affidavit required on appeal.
37. Judge or justice to send up transcript.
38. Judgment, how made a lien for costs.

SEC. 1. No person shall enter upon or into any lands, tenements, or other possessions, and detain or hold the same, but where entry is given by law, and then only in a peaceable manner.

SEC. 2. If any person shall enter upon or into any lands, tenements, or other possessions, and detain and hold the same with force or strong hand, or with weapons, or breaking open the doors and windows, or other part of a house, whether any person be in it or not, or by threatening to kill, maim, or beat the party in possession, or by such words or actions as to have a natural tendency to excite fear or apprehension of danger, or by putting out of doors, or carrying away the goods of the party in possession, or by entering peaceably, and then turning out by force, or frightening by threats, or other circumstances of terror, the party to yield possession; in such case, every person so offending shall be deemed guilty of a forcible entry and detainer within the meaning of this act.

SEC. 3. When any person shall wilfully, and with force, hold over any lands, tenements, or other possessions, after the determination of the time for which they were demised or let to him, or the person under whom he claims, or shall lawfully and peaceably obtain possession, but shall hold the same unlawfully and by force, and after demand made in writing for the delivery of possession thereof by the person having the right to such possession, his agent or attorney, shall refuse or neglect to quit such possession, such person shall be deemed guilty of an unlawful detainer.

SEC. 4. The three preceding sections of this act shall extend to and comprehend terms for years, and all estates, whether freehold, or less than freehold.

SEC. 5. The aforesaid forcible entries and detainers, and forcible and unlawful detainers, are hereby made cognizable before the presid-

ing judge of the county court, or any justice of the peace of the respective counties in which the offences may be committed.

SEC. 6. When a complaint to any presiding judge of the proper county, or any justice of the peace, shall be made in writing, and signed by the party aggrieved, his agent or attorney, specifying the lands, tenements, or other possessions, so forcibly entered and detained, or so unlawfully detained over, and by whom and when done, it shall be the duty of the presiding judge of the county court, or any justice of the peace, to issue his summons under his hand, directed to the sheriff of the county, commanding him to summon the person against whom the complaint shall be made, to appear before such judge or justice, at a day in such summons to be named.

SEC. 7. The summons shall be endorsed on, or annexed to, the complaint, and shall be in the form or to the effect following:

THE STATE OF ARKANSAS,

"*To the Sheriff of* ——— *county*— GREETING:

You are hereby commanded to summon ——— ———, of the county of ———, to appear before the undersigned ———, (presiding judge of the county court, or justice of the peace,) within and for the county of ———, at ———, in said county, on the ——— day of ———, at the hour of ten of the clock in the forenoon, of said day, then and there to answer and defend against the complaint of ——— ———, of forcible entry and detainer, (or of an unlawful detainer,) made by the said ——— ———, upon the land of the said ——— ———, as by the complaint of the said ——— ———, hereto annexed, will more fully appear; and have you then there this summons, with your return thereon. Given under my hand, this —— day of ——— A. D. 18—.

——— ———,

Presiding Judge of the County Court,

(or Justice of the Peace.)

SEC. 8. Such summons shall be served at least five days before the return day thereof, by reading the complaint and summons to the defendant therein named, or by delivering him a copy thereof, or by leaving such copy at his usual place of abode, with some white member of his family above the age of fifteen years, and explaining to such person the contents thereof.

SEC. 9. The presiding judge, or justice of the peace, shall, at the same time, issue to the sheriff, a venire, commanding him to summon twelve good and lawful men, qualified to serve as jurors, to appear at

the same time and place appointed for the trial of said complaint, to be a jury in the case.

SEC. 10. The venire for a jury shall be in the form or to the effect following:

THE STATE OF ARKANSAS,

To the Sheriff of ——— county— GREETING:

Whereas complaint has been made to me, the presiding judge of the county court (or a justice of the peace) for ——— county, of a certain forcible entry and detainer (or unlawful detainer) made by ——— ———, in and upon the lands of ——— ———, in the county aforesaid: These are, therefore, to command you that you cause to come before me, at ———, in the county aforesaid, on the ——— day of ———, between the hours of ten o'clock in the forenoon and one o'clock in the afternoon, of said day, twelve good and lawful men of your county, to serve as a jury to inquire into the forcible entry and detainer (or unlawful detainer) before described. Given under my hand, this ——— of ———, A. D. 18—.

———— ————,

Presiding Judge of the County Court,
(or Justice of the Peace.)

SEC. 11. If a sufficient number of jurors do not attend, or, attending, are set aside by challenging for cause, the judge or justice may order the sheriff to complete the number.

SEC. 12. The sheriff shall return to the judge or justice the summons and venire on or before the day assigned for the trial of the cause, and shall state on the summons how he hath executed the same, and shall endorse on the venire the list of jurors summoned by virtue of such venire.

SEC. 13. If the plaintiff does not appear by himself, his agent, or attorney, on the day of trial, he shall be nonsuited, and judgment entered against him for the costs.

SEC. 14. If the defendant fail to appear on the day of trial, by himself, or agent, or attorney, the judge or justice may proceed *ex parte*, or adjourn the cause, at his discretion, except that he shall in no instance adjourn for a longer time than ten days, nor to any other place than that named in the summons for the hearing of the case, except by the consent of the plaintiff and defendant.

SEC. 15. The county judge, or justice of the peace, shall have power to compel the attendance of witnesses, as in other cases, by attachment, and either party shall have process to bring in his witnesses.

SEC. 16. If witnesses reside at a distance, or from other causes their personal attendance cannot be had, their depositions may be read, and the judge, or justice of the peace, shall have full power to issue commissions to take depositions, which shall be taken as depositions are required to be taken in cases pending in a court of record, only making their return conform to the tenor of the commission.

SEC. 17. All depositions may be read on the trial of any such cause, if competent and relevant, and if it shall appear to the presiding judge of the county court, or justice of the peace, that it was impossible, or extremely inconvenient to procure the attendance of the witness whose deposition is offered in evidence.

SEC. 18. Jurors, when empanelled, shall be sworn well and truly to try the forcible entry and detainer (or unlawful detainer) as in the complaint of ——— ——— alleged, and a true verdict give, according to law and evidence.

SEC. 19. When the jury is sworn, the judge or justice of the peace shall cause the complaint to be read to them, and then call on the plaintiff to support the same; but the plaintiff shall not be required to make further proof of the forcible entry and detainer (or unlawful detainer) than that he was lawfully possessed of the premises, and that the defendant unlawfully entered into and detains the same, (or lawfully entering, unlawfully detains.)

SEC. 20. If the jury, on the trial, find the defendant guilty, the judge or justice of the peace shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff, to cause the plaintiff to be repossessed, to which shall be added a clause commanding the sheriff to levy the costs of the goods and chattels of the defendant.

SEC. 21. The verdict of the jury shall be in writing, and signed by the foreman only, and shall be in the form and to the effect following: "We, the jury, find the defendant *guilty*" (or, if in favor of defendant, then "not guilty") "of said forcible entry and detainer," (or "unlawful detainer") "in manner and form as the plaintiff hath in his complaint alleged;" or the jury may find the defendant guilty as to part, and not guilty as to the balance of the charge, as laid in the plaintiff's complaint. If so, they shall state it specially in their verdict.

SEC. 22. When the jury find a verdict of not guilty, generally, for the defendant, the verdict shall be so recorded, and the judge, or justice of the peace shall enter judgment against the plaintiff for costs,

and issue execution therefor against the goods and chattels of the plaintiff.

SEC. 23. It shall be the duty of the presiding judge of the county court, or justice of the peace, to enter on his minutes or docket the names of the jurors, their verdict, and his judgment thereon; the admission of evidence objected to, and the rejection of evidence offered; the reason of such admission or rejection, and all the proceedings before him had touching the complaint.

SEC. 24. In all cases under this act, the presiding judge of the county court, or justice of the peace, shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown on affidavit therefor, which shall be within ten days after granting the same; yet not more than one new trial shall be granted to either party.

SEC. 25. The estate, or the merits of the title shall in no wise be inquired into on any complaint which shall be exhibited by virtue of this act.

SEC. 26. Three years' peaceable and uninterrupted possession of the premises, immediately preceding the filing of a complaint under the provisions of this act, may be pleaded by any defendant, in bar of the plaintiff's demand of possession.

SEC. 27. Every person who shall have a field or settlement on public lands, and who shall reside on or be in possession of the same at the time of the forcible entry and subsequent detainer, or previous to the unlawful detainer, shall have the same remedy as is herein provided in such cases, against any person who shall make such unlawful entry upon him. The recovery in such case shall extend to one quarter section of land, taking such field or settlement as a centre; but not to interfere with any other settlement or improvement previously made upon the public lands.

SEC. 28. When any forcible entry and detainer, or unlawful detainer, shall be made upon or of any land, or other possession, against the provisions of this act, the person having the lawful right of possession, shall, against the wrong doer, be considered as entitled to such quantity, extent, and limits, of land, as by the patent, grant, concession, deed, survey, donation, settlement, or pre-emption right, such person, or those under whom he claims, can, by the laws of the United States or of this State, have and lawfully claim in and to such premises; and where no legal survey has been made, if such possession be detained, the field or improvement of the person entitled to the possession

shall be in the middle of the tract, as near as may be; making the survey as near in a square as practicable, without interfering with any established survey or line, or any conditional lines agreed upon by the adjoining proprietors or possessors.

SEC. 29. Any person having authority from the United States, or lawfully claiming under them, shall have power to enter upon such lands.

SEC. 30. Neither the judgment, nor any thing in this act, shall bar or prevent the party injured from bringing his action of trespass or ejectment, or other action, against the aggressor or party offending.

SEC. 31. The writ of restitution shall be in the form or to the effect following:

THE STATE OF ARKANSAS,

To the sheriff of —— county— GREETING:

Whereas —— —— did make to the undersigned, the presiding judge of the county court of —— county, (or justice of the peace,) a complaint in writing against —— ——, of said county, that he had been guilty of a forcible entry and detainer (or an unlawful detainer) of a certain tract of land (or other possessions) of the said —— ——; and whereas a jury was empanelled and sworn to inquire of said complaint, and did return their verdict that the said —— —— was guilty thereof, in manner and form as the said —— —— has complained against him; (or if the verdict is, guilty as to part only, then as follows: here insert a description of that part of the premises of which the defendant is found guilty as in the verdict;) and whereas judgment was thereupon entered by said judge (or justice) that the said —— ——, should have restitution of the premises. You are therefore commanded to cause the said —— —— to be forthwith removed from the premises aforesaid, and that the said —— —— have peaceable restitution of the same; and also that you levy of the goods and chattels of —— —— found in your county, the sum of ——, being the amount of costs on the trial aforesaid, together with —— dollars for this writ, and also your own fees; and make return of this writ, with your proceedings thereon, within ten days next after the date hereof. Witness —— ——, presiding judge of the county court for the county of ——, (or justice of the peace for the county of ——,) this —— day of —— A. D. 18—.

SEC. 32. In all suits under this act, either party shall have the right of appeal to the circuit court of the proper county, which appeal shall

be prayed for on the day of trial. In cases of appeal under this act, the trial in the circuit court shall be *de novo* on the merits.

SEC. 33. Upon all trials of cases of forcible entry and detainer, or unlawful detainer, on appeal from the county judge or justice of the peace, the circuit court shall carry its judgment into effect, as if such circuit court had had original jurisdiction of the case, and shall issue executions for costs, writs of restitution, and re-restitution when it shall be required.

SEC. 34. The presiding judge or justice of the peace, when any appeal is prayed for, under this act, as a condition precedent to the granting the same, shall require such party to enter into bond, with sufficient security to be approved of by him, to the adverse party, conditioned that he will prosecute his appeal without delay, and that he will pay all costs that shall be adjudged against him, and that he will in all things abide by and perform the judgment of the circuit court.

SEC. 35. All appeals shall be prayed for on the day of trial and bond entered into within ten days after the trial had before the county judge or justice of the peace.

SEC. 36. No appeal shall be allowed unless the appellant shall make affidavit that the appeal is not for the purpose of vexation or delay, but that justice may be done.

SEC. 37. The presiding judge of the county court, or justice, shall, when any appeal is granted by him, make out and certify a full and complete copy of his docket, and, together with all the original papers in the case, cause them to be filed in the office of the clerk of the circuit court, on or before the first day of the next term of the circuit court for the proper county.

SEC. 38. On any writ of restitution issued by a county judge or justice of the peace, if the sheriff shall return that he cannot find goods and chattels of the party against whom the writ issued, to pay the costs, the complainant may file in the office of the clerk of the circuit court a duly certified copy of the proceedings and judgment thereon, which shall be a lien on the lands of the defendant as other judgments of courts of record, and such clerk shall issue execution thereon, directed and to be levied as executions in courts of record.

[Approved: February 24, 1838.]

CHAPTER 64.

FORTS AND ARSENALS.

SECTION
1. Jurisdiction over, ceded to the United States.
SECTION
2. Copy of this act to be sent to the secretary of war.

SEC. 1. The jurisdiction of this State within and over all forts and arsenals that may be established and erected by the United States within the limits of this State, shall be and the same is hereby ceded to the United States, so far as the walls or permanent enclosures of the same shall extend and no farther.

SEC. 2. It shall be the duty of the secretary of state to transmit to the secretary of war an authenticated copy of this act.

[Approved: December 1, 1837.]

CHAPTER 65.

FRAUDS.

SECTION
1, 2, 4, 5, 6, 8, 9, 10. What gifts, conveyances, deeds, loans, &c, are void.
1. Deeds of gift, and conveyances of goods and chattels, in trust to the use of the person giving or conveying, void against creditors existing, and subsequent purchasers.
2. Made with intent to hinder and defraud creditors, &c. void as against creditors and purchasers, prior and subsequent.
3. Not void in favor of subsequent purchaser, if by deed or conveyance acknowledged or proven, and recorded, or with actual notice; unless the grantee or person to be benefited were party or privy to the fraud.
4. Gifts of goods, &c. and conveyances upon consideration not good in law, void as against creditors, and even against the grantor, unless possession *bona fide* accompany the gift or conveyance.
SECTION
5. Pretended loans of goods, &c. and reservations or limitations, &c.
6. Conveyances required to be recorded, when valid and binding, and between whom.
7. Not to extend to estates &c. upon valuable consideration, and *bona fide* conveyed; nor against purchaser without notice of fraud, from fraudulent grantee.
8, 9. Interests and estates, &c. not in writing, and their effect.
10. Trusts or confidences to be in writing.
11. But not where such trust or confidence may arise or result by implication of law.

SEC. 1. Every deed of gift and conveyance of goods and chattels in trust to the use of the person so making such deed of gift or conveyance, is declared to be void as against creditors existing, and subsequent purchasers.

SEC. 2. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods and chattels, or things in action, or of any rents issuing therefrom, and every charge upon lands, goods or things in action, or upon the rents and profits thereof, and every bond, suit, judgment, decree or execution, made or contrived with the intent to hinder, delay or defraud creditors or other persons of their lawful actions, damages, forfeitures, debts or demands, as against creditors and purchasers prior and subsequent, shall be void.

SEC. 3. No such conveyance or charge shall be deemed void in favor of an innocent subsequent purchaser, if the deed or conveyance shall have been duly acknowledged or proven and recorded, or the purchaser have actual notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance or person to be benefited by such charge, was party or privy to the fraud intended.

SEC. 4. Every gift of goods, chattels and slaves, and all other conveyances of the same not on consideration deemed good in law, shall be void as against all creditors and purchasers, and all such gifts, grants and conveyances, shall be void even against the grantor, unless possession really and bona fide accompany such gift or conveyance.

SEC. 5. Where any goods or chattels or slaves, shall be pretended to have been loaned to any person with whom or those claiming under him possession shall have remained for the space of five years without demand made and pursued by due process of law, on the part of the pretended lender ; or where any reservation or limitation shall be pre tended to have been made of any use of property by way of condition, reservation or remainder in another, the same shall be taken as to all creditors and purchasers of the persons so remaining in possession to be void, and that the absolute property is with the possession unless such loan, reservation or limitation of the use or property were declared by will or deed in writing proved or acknowledged and recorded as required by this act.

SEC. 6. No conveyance required by the provisions of this act to be recorded, shall be valid or binding, except between the parties and their legal representatives, until the same shall have been deposited in the recorder's office for record, nor even then if shown to be made

with intent to defraud prior creditors or purchasers, but shall be void against such prior creditors or purchasers.

SEC. 7. This act shall not extend to any estate or interest in any lands or tenements, goods or chattels, or any rents or profits out of the same, which shall be upon a valuable consideration and bona fide and lawfully conveyed; nor shall this act be construed to avoid any deed or sale to a subsequent bona fide purchaser from the grantee for valuable consideration, and without any notice of fraud.

SEC. 8. All leases, estates, interest of freeholds, or lease of years, or any uncertain interest of, in, to or out of any messuages, lands or tenements, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not either in law or equity be deemed or taken to have any other or greater effect or force than as leases not exceeding the term of one year.

SEC. 9. No leases, estates or interest, either of freehold or of term of years, in, to or out of any messuages, lands or tenements, except leases or a term not exceeding one year, shall at any time hereafter be assigned, granted or surrendered unless it be by deed or notice in writing signed by the party so assigning, granting or surrendering the same, or by their agents lawfully authorized by writing or by operation of law.

SEC. 10. All declarations or creations of trusts or confidences of any lands or tenements shall be manifested and proven by some writing signed by the party who is or shall be by law enabled to declare such trusts, or by his last will in writing, or else they shall be void; and all grants and assignments of any trusts or confidences shall be in writing signed by the party granting or assigning the same, or by his or her last will in writing, or else they shall be void.

SEC. 11. Where any conveyance shall be made of any lands or tenements, by which a trust or confidence may arise or result by implication of law, such trust or confidence shall not be affected by any thing contained in this act.

[Approved: December 6, 1837.]

CHAPTER 66.

FREEDOM.

SECTION
1. How persons held in slavery may sue for.
2. Orders to be made by the judge.
3. Such orders to be endorsed on the petition and a copy on the writ, and served therewith.
4. On what cases petitioner may be brought before the judge by warrant.
5. Nature of warrant, and to summon the person in whose possession he is found.
6. May be executed in any county.
7. Person in whose possession petitioner is found, to enter into recognizance, and how conditioned.
8. If he fail to enter into recognizance, petitioner to be hired out.
9. Nature of action for, and how brought.
10. Nature of declaration, and averments.
11. Manner of pleading to such action.
12. If plaintiff be a negro or mulatto, the *onus probandi* is on him.
13. What judgment, if his right be established.
14. Plaintiff to recover no damages.
15. Writ of error and appeal granted, and if taken by plaintiff, shall operate as a supersedeas without a recognizance.

SEC. 1. Any person held in slavery, may petition the circuit court, or judge thereof, in term time, or in vacation, for leave to sue as a poor person, in order to establish his right to freedom, and shall state in his petition, the ground on which his claim to freedom is founded.

SEC. 2. If in the opinion of the court or judge, the petition contains sufficient matter to authorize the commencement of a suit, the court or judge shall make the following orders: First, an order allowing the person to sue as a poor person, to establish his right to freedom, and assigning him counsel. Second, an order that the person have reasonable liberty to attend his counsel and the court, as occasion may require, that he be not removed out of the jurisdiction of the court, and that he be not subject to any severity on account of his application for freedom.

SEC. 3. Both orders shall be endorsed on the petition, and a copy of them endorsed on the writ and served therewith, and in the same manner.

SEC. 4. If the court or judge is satisfied, at the time of presenting the petition, or at any time during the pendency of the suit, that the petitioner has been, or is about to be restrained by any person of reasonable liberty of attending his counsel or the court, or is about to be removed out of the jurisdiction of the court, or that he has been or is about to be subject to any severity on account of his application for

freedom, the court or judge shall cause the petitioner to be brought by a warrant, under the seal of the court or hand of the judge.

SEC. 5. The warrant may be directed to the sheriff of any county, and shall command the officer to seize the petitioner, wherever he may be found, and bring him before the court or judge, and to summon the person in whose possession he is found, to appear before the court or judge, on a day and at a place therein to be specified.

SEC. 6. The warrant may be executed by the sheriff to whom it is directed, in any county in this State.

SEC. 7. When the petitioner is brought before the court or judge, the person in whose possession he was found, or his agent, shall enter into a recognizance to the State of Arkansas, with sufficient security, to be approved by the court or judge, in such sum as shall be required by such court or judge, conditioned that the petitioner shall, during the pendency of the suit, have reasonable liberty of attending his counsel and the court, that he shall not be removed out of the jurisdiction of the court, where the suit is to be brought or is pending, and that he shall not be subjected to any severity on account of his application for freedom; which recognizance shall be filed in the court, and be a part of the record thereof.

SEC. 8. If the person or his agent fail to enter into the recognizance, the court or judge shall make an order that the sheriff take possession of the petitioner and hire him out, to the best advantage, from time to time, during the pendency of the suit, and take a bond from the hirer, payable to the State of Arkansas, in such penalty as the court or judge shall in the order direct, and with such security as the sheriff shall approve, conditioned as in the recognizance of the defendant, and further conditioned, that the hirer will pay the hire to the sheriff, and return the petitioner at the expiration of the time for which he is hired, or as soon as the action is determined.

SEC. 9. The action to be brought under the leave given, shall be an action of trespass for false imprisonment, and shall be instituted in the name of the petitioner, against the person holding him in slavery, or claiming him as a slave.

SEC. 10. The declaration shall be in the common form of a declaration for false imprisonment, and shall contain an averment, that the plaintiff, before and at the time of the committing of the grievances, was and still is a free person, and that the defendant held and still holds him in slavery.

SEC. 11. The defendant may plead as in other like cases, or he may plead the general issue, and give any special matter in evidence.

SEC. 12. If the plaintiff be a negro or a mulatto, he is required to prove his right to freedom.

SEC. 13. If the plaintiff's right to freedom is established, judgment of liberation shall be given in his favor against the defendant, and all persons claiming under him by title obtained after the commencement of the suit.

SEC. 14. In actions prosecuted under this act, the plaintiff shall not recover any damages.

SEC. 15. Either party to the suit may have a writ of error or appeal to the supreme court; and an appeal or writ of error taken by the plaintiff shall operate as a supersedeas without any recognizance.

[Approved: December 18, 1837.]

CHAPTER 67.

FUGITIVES FROM JUSTICE.

SECTION

1. On demand of executive of other State or Territory, executive to issue warrant for, and to whom directed.
2. Form of warrant.
3. Where executed, &c.
4. Prisoner arrested by, may be confined.
5. Expenses of such arrest, how paid.
6. When judge or justice may issue warrant for apprehension of such fugitive.
7. When taken, to be committed or bailed.
8. Examination before judge or justice.
9. Executive, when to notify executive of other State or Territory.
10. Warrant of executive, on demand thereafter made.
11. If bailed, to be arrested on such warrant.
12. Proceedings of court when party bailed appears before demand.
13. How long accused to be imprisoned or held to bail.
14. Recognizance forfeited, how to enure.
15. Warrant to issue for person held to labor or service elsewhere, and fled to this State.

SECTION

16. What proof to authorize such warrant.
17. Execution of such warrant.
18. Proceedings after arrest, and prisoner when committed or bailed.
19. If claimant not entitled to services of such person, he is to be discharged.
20. Except when runaway slave, and in such case how disposed of.
21. Costs, expenses and damages, how paid upon discharge.
22. Certificate to be given if claimant entitled as charged.
23. Form of such certificate.
24. Fugitive not to be proceeded against except according to this act.
25. Penalty for violation of last section.
26. Fees, expenses and costs, how paid.
27. Reward to be offered by executive for apprehension of offenders, escaping after committing crime within this State.
28. Reward, how paid.

SEC. 1. Whenever the executive of any other State, or any Territory of the United States, shall demand of the executive of this State any person as a fugitive from justice, having complied with the requisitions of the act of congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant under the seal of the State, directed to any sheriff, coroner, or other person, whom he may think fit to intrust with the execution of such warrant.

SEC. 2. Such warrant shall authorize the person to whom it may be directed, to arrest the fugitive anywhere within the limits of this State, and to convey him to any place within the State which the executive may in his warrant direct; and commanding all sheriffs, constables, coroners and other officers to whom the same may be shown, to aid and assist in the execution thereof.

SEC. 3. Every such warrant may be executed in any part of the State, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested, as sheriffs and other officers by law have in the execution of civil and criminal process directed to them, with like penalties on those who refuse their assistance.

SEC. 4. The officer or person executing such warrant, may, when necessary, confine the prisoner arrested by him, in the jail of any county through which he may pass, in conveying such prisoner to the place commanded in the warrant, and the keeper of such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route.

SEC. 5. The expenses which may accrue under the foregoing provisions of this act, being first ascertained by the executive, shall on his certificate be allowed and paid out of the State treasury.

SEC. 6. Whenever any person within this State shall be charged on the oath or affirmation of any creditable person, before any judge or justice of the peace of this State, with the commission of any crime in any other State or Territory of the United States, and that such person hath fled from justice, such judge or justice shall issue his warrant for the apprehension of such person.

SEC. 7. If, on examination it shall appear to the judge or justice that the person charged is guilty of the crime as alleged, he shall commit him to the jail of the county, or if the offence is bailable, take bail for his appearance at the next term of the circuit court in the county.

SEC. 8. The judge or justice shall proceed in the examination of such person, in the same manner as is required when a person is brought before such officer charged with an offence against the laws of this State, and shall reduce the examination to writing, and make return thereof as in other cases, and shall also send a copy of the examination and proceedings to the executive of this State without delay.

SEC. 9. If in the opinion of the executive, the examination contains sufficient evidence to warrant the finding of an indictment, he shall forthwith notify the executive of the State or Territory in which such crime is alleged to have been committed, of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of the indictment to accompany the demand.

SEC. 10. When a demand shall be made for the offender, the executive shall forthwith issue his warrant under the seal of the State, to the sheriff of the county wherein the party charged is committed, or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the State.

SEC. 11. If the accused shall be at large on bail or otherwise, the sheriff shall forthwith arrest him, anywhere within the State, and surrender him agreeably to the command of the warrant.

SEC. 12. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the circuit court may discharge the recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

SEC. 13. In no case shall the accused be kept in prison or held to bail beyond the end of the second term of the circuit court, after the arrest, if no demand shall be made for him within that time; but shall be discharged.

SEC. 14. If any recognizance entered into under the provisions of this act, shall be forfeited, it shall enure to the benefit of the State.

SEC. 15. Whenever any person legally held to labor or service in any State or Territory of the United States, shall escape into this State, the person entitled to the services of such fugitive, or the agent of such person duly authorized by him, upon making dueproof of such title to any court of record, or any judge thereof, or any justice of the peace, shall be entitled to a warrant, directed to the sheriff of the

county in which such magistrate shall be, commanding him to take the body of such fugitive, and have him before the court or magistrate issuing the warrant, on a day to be therein specified.

SEC. 16. The proof necessary to entitle any person to such warrant shall be an affidavit setting forth particularly and minutely the ground of such claim to the services of such fugitive, the time of the escape, and where he then is.

SEC. 17. The officer to whom such warrant shall be directed and delivered, shall execute the same by arresting the body of such fugitive, and bringing him before the court or magistrate before whom such writ shall be returnable.

SEC. 18. The court or magistrate shall proceed to hear the allegations and proof of the parties, and shall, if required, allow a reasonable time to either party to procure proof, and in such case commit such fugitive to the custody of the sheriff of the county for safe keeping, or may take bond to the claimant, in such penalty as shall be deemed reasonable, with security, conditioned that such fugitive shall appear before the court or magistrate at a time and place therein specified, to abide the order and decision of the court or magistrate in relation to the claim.

SEC. 19. If upon the hearing of the parties and their witnesses, the court or magistrate shall be satisfied that the claimant is not entitled to the service of such person, he shall be discharged except in the case hereinafter mentioned.

SEC. 20. If it appear that the person so arrested and brought before the court or magistrate is a runaway slave, not the property of the claimant, the court or magistrate shall commit such slave to the jail of the county, there to be dealt with in all respects, as by law provided in cases of runaway slaves.

SEC. 21. When any person arrested under this act as a fugitive from service, shall be discharged by the court or magistrate, the person at whose instance he was arrested, shall pay him the costs and expenses incurred by him, and all damages he may have sustained.

SEC. 22. If it shall appear that the claimant is entitled to the service of such fugitive, the court or magistrate before whom such hearing may be had, shall grant to the claimant a certificate stating that it satisfactorily appears that such fugitive (naming him) doth owe service or labor to the claimant (naming him), and thereby allowing such person, or his agent to take such fugitive and convey him to the place

of residence of the person entitled to his labor or service; and such fugitive shall thereupon be delivered to such claimant, or to his agent.

SEC. 23. Such certificate shall authorize the claimant or his agent therein named, to remove such fugitive without unnecessary delay, through and out of the State, to the place of residence of the claimant.

SEC. 24. No person shall take or remove any such fugitive from this State, or do any act toward such removal, unless authorized so to do pursuant to the provisions of this act.

SEC. 25. Every person violating the provisions of the preceding section shall forfeit and pay for the use of the State any sum not less than one hundred dollars.

SEC. 26. The fees and expenses incurred in proceedings herein authorized against any fugitive from labor or service, shall be paid by the person at whose instance the proceedings are instituted, before any warrant shall be issued, or other service rendered for which a fee is chargeable, except, that where such fugitive is committed as a runaway slave, the cost of commitment and detainer shall be paid in the same manner as like expenses under the law concerning runaway slaves.

SEC. 27. If any person charged with or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting within this State, shall break prison, escape, or flee from justice, or abscond and secrete himself, in such cases it shall be lawful for the executive, if he shall deem it necessary, to offer a reward not exceeding two hundred dollars, for apprehending and delivering such person into the custody of such officer as he may direct.

SEC. 28. Any person apprehending and delivering such person to the proper officer, and producing to the executive the receipt of such officer for the body of such person, shall be entitled to the reward offered by the executive, and the executive shall certify the amount of such reward to the auditor, who shall issue his warrant on the treasury therefor, to be paid out of any money appropriated for the contingent expenses of the executive department.

[Approved: March 3, 1838.]

CHAPTER 68.

GAMING.

SECTION
1. Money or property lost at, may be recovered back — how and within what time.
2. Heirs, executors, administrators or creditors of persons losing may have same remedy.
3. Not to extend to money lost on turf race.
4. Judgments, conveyances, bonds, &c. where the consideration in whole or part, is money won, are void.
5. The assignment thereof shall not affect the defence.
6. Matter of defence under this act may be specially pleaded or given in evidence under the general issue.
7. Plaintiff may call on defendant to answer on oath, and if he refuse to answer, the same shall be taken as confessed.
8. But his answer shall not be evidence against him, on indictment.

SEC. 1. Any person who shall lose any money or property, at any game or gambling device, or any bet or wager whatever, may recover the same by action of debt, if for money, and if for property, by action of detinue or trover, against the person winning the same; but such suit shall be instituted within ninety days after the paying over of the money or property so lost.

SEC. 2. The heirs, executors, administrators or creditors of the person losing any money or property, at any game or gambling device, or on any bet or wager whatever, may have the same remedy as is provided in the preceding section for the person losing.

SEC. 3. Nothing in the two preceding sections, shall be so construed as to enable any person to recover back any money or property lost on any turf race.

SEC. 4. All judgments, conveyances, bonds, bills, notes, securities and contracts, where the consideration or any part thereof is money or property won at any game or gambling device, or any bet, or wager whatever, or for money or property lent to be bet at any gaming or gambling device, or at any sport or pastime whatever, shall be void.

SEC. 5. The assignment of any bond, bill, note, judgment, conveyance, contract, or other security, shall not affect the defence of the person executing the same.

SEC. 6. Any matter of defence under this act, may be specially pleaded, or may be given in evidence under the general issue.

SEC. 7. In all suits under this act, in the circuit court, or before a justice of the peace, the plaintiff may call on the defendant to answer on oath any interrogatory touching the case, and if the defendant refuse to answer, the same shall be taken as confessed.

SEC. 8. Such answer shall not be admitted as evidence against such person in any proceedings by indictment.

[Approved: December 7, 1837.]

CHAPTER 69.

GARNISHMENT.

SECTION
1. Writ of, when to issue, and form of.
2. How directed, served and returned.
3. Plaintiff to file allegations and interrogatories, and at what time.
4. Garnishee to answer under oath, and at what time.
5. Plaintiff to make up issue, and the same to be tried.
6. Judgment upon issue found.
7. How garnishee may be discharged, on return day of writ, and released from responsibility to defendant.
8. Effect of judgment against garnishee as to releasing from responsibility.
9. Neglect or refusal to answer interrogatories, judgment to be given, and what.

SEC. 1. In all cases where any plaintiff may have obtained a judgment, in any court of record or before any justice of the peace, of this State, and such plaintiff shall have reason to believe that any other person is indebted to the defendant, or has in his hands or possession goods and chattels, moneys, credits and effects, belonging to such defendant, such plaintiff may sue out a writ of garnishment setting forth such judgment, and commanding the officer charged with the execution thereof, to summon the person therein named as garnishee, to appear at the return day of such writ and answer what goods, chattels, moneys, credits and effects, he may have in his hands or possession, belonging to such defendant, to satisfy said judgment, and answer such further interrogatories as may be exhibited against him.

SEC. 2. If such writ be issued out of the circuit court, it shall be directed to the sheriff, and if issued by a justice of the peace, it shall be directed to the proper constable, and shall be served and returned in the same manner as writs of summons.

SEC. 3. The plaintiff shall, on or before the return day of such writ, prepare and file all the allegations and interrogatories, in writing, with the clerk or justice issuing such writ, upon which he may be desirous of obtaining the answer of such garnishee, touching the goods and chattels, moneys, credits, and effects of the said defendant and the value thereof, in his hands and possession at the time of the service of such writ, or at any time thereafter.

SEC. 4. Such garnishee shall, on or before the third day after the return day named in such writ, exhibit and file under his oath, full, direct and true answers to all such allegations and interrogatories as may have been exhibited against him by the plaintiff.

SEC. 5. If the garnishee shall file his answer to the interrogatories exhibited, and the plaintiff shall deem such answer untrue or insufficient, he may deny such answer, and cause his denial to be entered on the record, and the court or justice, (if neither party require a jury) shall proceed to try the facts put in issue by the answer of the garnishee and the denial of the plaintiff.

SEC. 6. If the issue be found for the garnishee, he shall be discharged without further proceedings; but if the issue be found for the plaintiff, judgment shall be entered for the amount found due from the garnishee to the defendant in the original judgment, or so much thereof as will be sufficient to satisfy the plaintiff's judgment with costs.

SEC. 7. If on the return day of any such writ of garnishment, the garnishee shall surrender to the plaintiff all the goods and chattels, moneys, credits and effects, which may be in his hands or possession, belonging to the defendant, he shall be discharged with costs, and the court or justice, shall enter up an order releasing and discharging such garnishee from all responsibility to the defendant, in relation to the goods and chattels, moneys, credits and effects so surrendered.

SEC. 8. If all cases where judgment shall be rendered against any garnishee on an answer to interrogatories filed, such judgment shall have the effect to release the garnishee from all responsibility in relation to the goods and chattels, moneys, credits and effects, for which such judgment may have been rendered.

SEC. 9. If any garnishee, after having been served with a writ of garnishment ten days before the return day thereof, shall neglect or refuse to answer the interrogatories, exhibited against him, on or before the third day after the return day of such writ, the court or justice before whom such matter is pending, shall enter judgment against such

garnishee, for the full amount specified in the plaintiff's judgment against the original defendant together with costs.

[Approved: December 13, 1837.]

CHAPTER 70.

GENERAL ASSEMBLY.

SECTION
1. Resignations of members, how made; and writs of election how to issue thereupon.
2. Governor to issue, in all cases of vacancy.
3. Writ of election how directed, when to fill vacancy in office of Senator.
4. Duties of sheriff, and election how held, &c.

SEC. 1. When any member elected to either house of the General Assembly, shall resign in the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any such member shall resign during any session, he shall address his resignation to the presiding officer of the house of which he is a member, which resignation shall be entered upon the journals; in which case, and in all cases of vacancies happening or being declared, during any session of the General Assembly, by death, expulsion, or otherwise, the presiding officer of the house in which such vacancy shall happen, shall immediately notify the governor thereof, who shall immediately issue a writ of election to fill such vacancy.

SEC. 2. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess thereof, he shall, without delay, issue a writ of election to supply such vacancy.

SEC. 3. When any vacancy shall happen in the senate for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when such vacancy shall happen in a senatorial district which shall have been divided or altered after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house

for any county which shall have been divided after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

SEC. 4. The sheriff to whom any writ of election shall be delivered, shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ to the sheriff of each of the counties within which any part of such old county may lie, who shall cause copies of such notice to be put up, and the election to be held accordingly in such parts of their respective counties as composed a part of the old county or district, for which the election was held at the last preceding general election; and the returns shall be made, and the certificate of election granted, in the same manner as if no division had taken place.

[Approved and in force: October 26, 1836.]

CHAPTER 71.

GIFTS OF SLAVES.

SECTION
1. Slaves to be taken as personal estate.
2. Gift of slaves, how to pass property.
SECTION
3. This act only to extend to gifts of slaves remaining in possession of donors.

SEC. 1. All slaves shall be taken and held as personal estate.

SEC. 2. No gift of any slave shall pass or vest any right, estate or title, in or to any such slave, in any person whatsoever, unless the same be made; first, by will duly proved and recorded; or, second, by deed in writing, to be proved by not less than two witnesses, or acknowledged by the donor, and recorded in the county in which one of the parties lives, within six months after the date of such deed.

SEC. 3. This act shall only extend to gifts of slaves, whereof the donors have, notwithstanding such gifts, remained in the possession thereof, and not to gifts of such slaves as have come to the possession of, and remain with the donee, or some person claiming under such donee.

[Approved: February 19, 1838.]

CHAPTER 72.

GUARDIANS AND WARDS.

SECTION
1. Court of probate to have power over, and guardianship, to what age to continue.
2. In what cases, and at what age, minors may choose their own guardians.
3. Power of removal.
4. Father to be natural guardian, and his powers.
5. No person to whom estate of minor may descend, to be guardian, except the father.
6. Father may appoint guardian for child by deed, or last will and testament.
7. Minors of age of fourteen may choose guardian.
8. In what cases court may appoint.
9. Application for appointment, to be by petition.
10. Bond of guardian, form of.
11. To be filed, and copy to be evidence.
12. No entry of appointment to be made, till bond given and approved.
13. When other and additional security may be required.
14. Guardian to rent improved lands.
15. To take bond for payment of rent, and against waste.

SECTION
16. May let out unimproved lands on improvement leases, and for how long.
17. Amount to be expended for maintenance and education of ward.
18. Not to prevent allowance of accounts heretofore contracted.
19. Powers of guardian generally.
20. Receipts, discharges, &c. of, to be good.
21. May sue and defend.
22. Guardian to deliver over property, and how compelled.
23. Not to dispute right of ward to property, except when.
24. Guardians *ad litem* may be appointed.
25. Disposition of surplus money of ward.
26. Not loaned or deposited, guardian accountable for interest.
27. Liability of for money loaned, how restricted.
28. Curator of real estate, when appointed.
29. Power of court over curator.
30. Disposition of rent by curator.
31. Guardians, when to account.
32. Penalty for not making settlement.

SEC. 1. The courts of probate in the several counties of this State, shall have power to appoint guardians for minors, and possess the control and superintendence of them; and the guardianship shall continue until the ward arrive at the age of twentyone years, whether male or female, except as hereinafter provided.

SEC. 2. When a guardian shall be appointed for any minor under the age of fourteen, unless such appointment be according to the deed or last will and testament of the minor's father, if the minor, after arriving at the age of fourteen years, shall choose another person for his guardian, the court, if there be no just cause to the contrary, shall appoint the person so chosen, and the preceding guardianship shall thereby be superseded.

SEC. 3. Such court shall have power to remove guardians, for good cause shown.

SEC. 4. The father shall be the natural guardian of his child, and shall have the care of his person and education, but in no case shall he have the care and management of his estate, unless he be appointed by the court for that purpose, when he shall give bond and security in the same manner as other guardians.

SEC. 5. No person to whom the estate of any minor will probably descend, shall be appointed guardian for such minor, except the father.

SEC. 6. Every father may, by deed or last will and testament, name a guardian for his child, and the person named shall be appointed, unless he refuse or neglect to give security, or there be other sufficient causes against appointing him.

SEC. 7. A minor of the age of fourteen years or upwards, may choose a guardian, and the court, if there be no just cause to the contrary, shall appoint the person chosen.

SEC. 8. When a minor is under the age of fourteen years, or resident out of the State, and cannot conveniently appear in court to choose a guardian, or refuses or neglects to choose a person whom the court can approve, the court may, according to its discretion, appoint a guardian.

SEC. 9. All applications for the appointment of guardians, shall be by petition. If the minor be over the age of fourteen years, it shall be so stated in the petition, and it shall be signed by the applicant; and if the minor be under the age of fourteen years, it shall be so stated in the petition, and the same shall be signed by the next of kin of the minor, or by some person interested in his behalf.

SEC. 10. Every person appointed a guardian shall, at the term of the court at which he may be appointed, enter into bond, with security, to his ward, in a penal sum, to be determined by the court, which bond shall be conditioned in the following form: "The condition of this obligation is such, that whereas the said —— —— was, on the —— day of ——, A. D. 18—, appointed, by the court of probate of the county of ——, guardian of —— ——, a minor under the age of twentyone years: Now, if the said —— —— shall duly render, according to law, just and true accounts of his guardianship, and if the said —— ——, his heirs, executors, or administrators, upon the determination or ceasing of such guardianship, shall deliver and pay to the said —— ——, his executors, or administrators, or any guardian

that may be appointed to the said —— ——, after the determination or ceasing of the guardianship of the said —— ——, all the money, property, and effects, belonging to him, in the possession, or under the control of the said —— ——, and that shall be due to him, from the said —— ——; and if the said —— —— shall, in all things, faithfully perform and fulfil his duty as guardian as aforesaid, then this obligation shall be void, and of none effect; otherwise to be and remain in full force and virtue."

SEC. 11. Such bond shall be filed in the office of the clerk of the court of probate, a copy of which shall be evidence in all cases, in the same manner as the original.

SEC. 12. No entry of the appointment of a guardian shall be made, until bond and security be given, and the same be approved by the court.

SEC. 13. If it shall at any time appear to the satisfaction of the court that the bond and security given by any guardian is insufficient, the court shall order such guardian to give such other and additional security as the circumstances of the case may require; and if such guardian shall neglect or refuse to give such other and additional security within ten days after the making of such order, notice thereof having been given to the guardian, he shall be removed from office, and his authority as guardian, from that time, shall cease.

SEC. 14. When any minor shall be the owner of any improved lands, it shall be the duty of the guardian of such minor, annually, to rent such lands to the highest bidder, giving ten days' previous public notice of the time and place of renting the same.

SEC. 15. The guardian shall take bond and security for the payment of the rent, and that the tenant will not commit waste on the demised premises.

SEC. 16. If any ward be the owner of wild or unimproved lands, not connected with any cultivated or improved tract belonging to such ward, the guardian may, under the advice and direction of the court, let out such unimproved lands, on improvement leases, not to extend more than two years beyond the majority of such ward.

SEC. 17. The probate court may direct a guardian to expend for the maintenance and education of his ward, a specified sum, although such sum may exceed the income of the ward's estate; but without such direction, the guardian shall not be allowed, in any case, for the maintenance and education of the ward, more than the clear income of the estate.

SEC. 18. Nothing in the preceding section shall be so construed as to prevent the allowance of accounts heretofore in good faith contracted by any guardian for the maintenance and education of his ward.

SEC. 19. A guardian shall have the care of the person of the ward, and the possession and management of his estate, both real and personal, and shall have authority to receive all debts, rents, and things in action, due or belonging to his ward, and to sell his ward's personal estate of a perishable nature, and, also, under the direction of the court, to sell any other personal property belonging to his ward.

SEC. 20. All receipts, discharges, and transfers, of the guardian, made in good faith, in the exercise of his authority, shall be valid and effectual.

SEC. 21. Every guardian appointed under the provisions of this act, shall be permitted to sue and defend for his ward.

SEC. 22. The court of probate shall have power to order any property, real or personal, that may come to the possession of a guardian as such, and shall be in his possession at the determination of his guardianship, to be delivered to the person who was his ward, his executors, or administrator, and to enforce the same by attachment.

SEC. 23. The guardian, or his heirs, executors, administrators, or assigns, shall not dispute the right of the ward to any property that shall have come to his possession as guardian, except such property as shall have been recovered from the guardian, or there be a personal action pending on account of it.

SEC. 24. No person shall have any right or authority over the property of a minor, unless he shall have been appointed by the court, for that purpose, except that a court of law or equity may, in any action or suit against a minor, admit such person as may be deemed proper, to defend such suit or action as guardian of such minor *ad litem*.

SEC. 25. If at any time any guardian shall have on hand any money belonging to his ward, beyond what may be necessary for his education and maintenance, such guardian shall, under the direction of the court, either deposit such money in the Bank of the State of Arkansas, or one of its branches, in accordance with the provisions of the sixteenth section of the charter of said bank, or loan the same to such person as will give good security therefor, and such money shall be loaned on such time as the court shall direct.

SEC. 26. If any guardian fail to loan or deposit the money of his

ward on hand, as aforesaid, under the provisions of this act, he shall be accountable for the interest thereon.

SEC. 27. No guardian shall be personally responsible for any money belonging to his ward, and loaned out by him, under the direction of the court, and on security which may have been approved by the court, in case of the inability of the person to whom such money may have been loaned, or his security to pay the same.

SEC. 28. If any minor own real estate, and have no guardian, the court of probate may appoint a curator to take charge of such estate, whose powers shall cease on the appointment of a guardian.

SEC. 29. The court shall have power to make such rules and regulations in relation to the curator of the estate of any minor, as may be deemed just and proper.

SEC. 30. In all such cases the rent of the real estate of any such minor shall be paid by the curator into the court, and the same shall be deposited in some bank, or otherwise appropriated for the benefit of the minor.

SEC. 31. Every guardian shall render an account of his guardianship at the end of one year from his appointment, and shall fully account for all moneys, effects, and property of his ward, that may have come to his hands, and shall afterwards render accounts and make settlement of his guardianship, from time to time, as the court of probate may by order direct.

SEC. 32. Any guardian neglecting or refusing to make settlement, as required by this act, or as may be required by order of the court, shall be liable to be attached and imprisoned, until he make such settlement.

SEC. 33. The guardianship of a female shall cease on marriage.

[Approved: February 14, 1838.]

CHAPTER 73.

HABEAS CORPUS.

ART. I.—HOW SUED OUT, &c.

SECTION
1. What persons may have the writ.
2. Application for, how and to whom made.
3. Requisites of petition for.
4. To be verified by affidavit.
5. Copy of process, &c. to be annexed, or excuse.
6. Writ to be granted on such petition, except in what cases.
7. When court or judge may issue writ *sua sponte*, without petition.
8. Form of writ.
9. How sealed or signed and tested.
10. Prisoner or person imprisoning, how designated therein.
11. Defect of form not to vitiate, and person served to obey.
12. Petitioner may be required to pay costs and charges.

SEC. 1. Every person committed, detained, confined, or restrained of his liberty within this State, for any criminal or supposed criminal charge, or under any pretence whatever (except when under the provisions of this act, such person can be neither discharged, bailed, or otherwise relieved,) may prosecute a writ of habeas corpus, as hereinafter provided, to inquire into the cause of such confinement or restraint.

SEC. 2. Application for such writ shall be made by petition signed by the party for whom relief is intended, or by some person in his behalf, to some court of record in term time, or to any of the judges of the supreme court, or judge of the circuit court, or to the presiding judge of the county court, in vacation.

SEC. 3. The petitioner must state in substance by whom the party for whom relief is prayed, is imprisoned or restrained of his liberty, and the place where, naming both parties, if their names be known, or describing them if they are not, all the facts, concerning the imprisonment or restraint, and the true cause thereof, to the best of the knowledge and belief of the party; and if the imprisonment be alleged to be illegal, the petition must also state in what the illegality consists.

SEC. 4. The facts stated in the petition must be verified by oath of the applicant or some other competent person.

SEC. 5. If the restraint or confinement is by virtue of any warrant, order or process, a copy thereof must accompany the petition, or it must appear by affidavit annexed thereto, that by reason of the person being concealed before the application, a demand of such copy could not be made, or that such demand was made of the person by whom the prisoner is confined or restrained, and a copy refused.

SEC. 6. Any court or judge empowered to grant any writ of habeas corpus, under this act, to whom such petition shall be presented, shall grant such writ without delay, unless it appear from the petition itself, or the documents annexed, that the party can neither be discharged, admitted to bail, or in any other manner relieved under the provisions of this act.

SEC. 7. Whenever any court of record, or any judge of the supreme court, or any judge of the circuit, or the presiding judge of the county court, shall have evidence from any judicial proceeding had before them, that any person is illegally confined, or restrained of his liberty within the jurisdiction of such court or judge, it shall be the duty of the court or judge, to issue a writ of habeas corpus for his relief, although no application or petition be presented for such writ.

SEC. 8. All writs of habeas corpus shall run in the name of the State of Arkansas, and be directed to the officer or person by whom the party to be relieved is imprisoned or restrained of his liberty, commanding him to have the body of the person detained or imprisoned, together with the time and cause of such imprisonment or detention, before the court or judge, without delay, to do and receive what shall then and there be considered concerning the person imprisoned or detained.

SEC. 9. All writs of habeas corpus issued by a court, shall be under the seal of the court by which they are awarded, and if issued by a judge in vacation or out of court they shall be signed officially by the officer by whom they are granted.

SEC. 10. In a writ of habeas corpus the person having the custody of the prisoner may be designated either by his name of office, if he have any, or his own name ; or if both names be uncertain or unknown, he may be described by any assumed appellation, and the person directed to be produced may be designated by his name, but if his name be uncertain or unknown he may be described in any other way so as to designate or identify the person intended.

SEC. 11. Writs of habeas corpus shall not be disobeyed for any defect of form, and any one who shall be served therewith, shall be

deemed to be the person to whom it is directed, though it may be directed to him by a wrong name, or description, or to another person.

SEC. 12. The courts or judges allowing a writ of habeas corpus, may in their discretion require as a duty to be performed in order to render the service effectual, that the charges of bringing up the prisoner, and conveying him back if remanded, shall be paid by the petitioner, and in such case, the court or judge shall, on the allowance of the court, specify the amount, which shall not exceed ten cents per mile, and the amount so allowed shall be stated on the writ, by the court or judge allowing the writ.

ART. 11.—SERVICE AND RETURN.

SECTION
1. How served.
2. How when party conceals himself, or refuses admittance.
3. By whom served.
4. Charges to be tendered, when.
5. Person served, to obey and return writ.
6. Time for return.
7. Requisites of the return.
8. How attested and verified.
9. Person served, to bring body of prisoner.
10. On failure to make return, attachment to issue against delinquent.
11. And delinquent to be committed.
12. Delinquent being sheriff, attachment how issued and served.
13. And precept to issue, to bring in prisoner.
14. Posse comitatus may be called to aid in executing such attachment and precept.
15. Examination or information, &c. also to be brought up.
16. Person served to obtain them, and how.
17. No examination filed, committing magistrate to appear in person.

SEC. 1. The writ of habeas corpus may be served by delivering the same to the officer or person to whom it is directed, or being left at the jail or other place in which the prisoner may be confined, with any under officer, jailer or other person, having charge for the time being of the prisoner.

SEC. 2. If the person upon whom the writ ought to be served, conceal himself or refuse admittance to the person attempting the service thereof, it may be served by affixing the same in some conspicuous place on the outside either of the dwelling house or jail or place where the party is confined.

SEC. 3. Writs of habeas corpus may be served by any free white male person over the age of twentyone years.

SEC. 4. In all cases where charges are allowed by the court or judge awarding the writ, the person serving the same shall pay or tender to the officer or other person having custody of the prisoner, the amount of charges for bringing up such prisoner, otherwise such service shall not be deemed complete.

SEC. 5. It shall be the duty of every officer and other person upon whom a writ of habeas corpus shall be served according to the provisions of this act, whether such writ be directed to him or not, to obey and return such writ according to the requisitions thereof, to the court or judge by whom the writ was awarded, or in case of adjournment of such court, or the absence of such judge, then to some other judge authorized by this act to issue such writ.

SEC. 6. If the place of hearing be within twenty miles of the place of service, the return shall be made within twentyfour hours after service of the writ; and the like time shall be allowed for every additional twenty miles.

SEC. 7. Every officer or other person, upon whom a writ of habeas corpus shall be served, shall state in his return plainly and unequivocally; first, whether he has or has not the party in his custody, or under his power or restraint; second, if he has the party in his custody or power or under his restraint, he shall state the authority, and true cause of such imprisonment or restraint, setting forth the same at large; third, if the party be restrained, imprisoned, or detained by virtue of any writ, order, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be exhibited, on the return of the writ, to the court or judge to whom the same is returnable; fourth, if the person making the return shall have had the party in his power or custody, or under his restraint, at any time before the service of the writ, and has transferred such custody or possession to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place.

SEC. 8. The return must be signed by the person making the same, and except where such person shall be a sworn officer and shall make his return in his official capacity, it shall be verified by his oath.

SEC. 9. If any officer or person upon whom a writ of habeas corpus shall have been served, shall have in his power or custody or under his restraint, the party for whose benefit the writ was awarded, he shall also bring the body of such person before the court or judge, according to the command of the writ, and within the time specified for making return, except in case of sickness of such person, as hereinafter provided.

SEC. 10. If the officer or person upon whom a writ of habeas corpus shall be served, shall refuse or neglect to obey the same, by producing the party named or described in the writ, and making a full and explicit return to such court or judge, within the time required by

this act, and no sufficient excuse for such refusal or neglect be shown, the court or judge before whom such writ shall have been made returnable, shall, upon proof of service thereof, forthwith issue an attachment against the delinquent, directed to the sheriff of any county within this State, commanding him forthwith to apprehend such delinquent and to bring him immediately before such court or judge.

SEC. 11. On such person being brought before such court or judge, he shall be committed to close custody, in the jail of the county, in in which the court or judge shall be, until he shall comply with such writ, and obey any order that may be made by such court or judge, in relation to the person for whose benefit or relief such writ shall have been issued.

SEC. 12. If the delinquent be a sheriff, the attachment may be directed to any coroner, or other person to be designated therein, who shall have full power to execute the same, and such sheriff, upon being brought up, may be committed to any jail other than his own.

SEC. 13. The court or judge by whom such attachment shall be awarded, may also issue a precept to the same sheriff or other person, to whom such attachment shall be directed, commanding him to bring forthwith before such court or judge the party for whose benefit or relief such writ of habeas corpus shall have been allowed, who shall thereafter remain in the custody of the sheriff or person executing such precept, until he shall be discharged, bailed or remanded, as such court or judge shall direct.

SEC. 14. In the execution of such writ of attachment and precept, or either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as is provided by law, in the execution of writs and process by any officer.

SEC. 15. When the party for whose relief a writ of habeas corpus shall have been issued, shall stand committed for any criminal or supposed criminal matter, it shall be the duty of the officer or person upon whom the writ is served, to bring with the writ all and every examination and information in his hands, possession, custody or charge, relating to the commitment.

SEC. 16. If no such examination shall have accompanied the commitment, nor be in the possession of the officer having the prisoner in custody, such officer shall exhibit the habeas corpus, when served on him, to the magistrate by whom the prisoner was committed, or the clerk of the court, if the papers are in his office; and it shall be the duty of the magistrate or clerk to deliver to such officer having the

custody of the prisoner, the examinations and proofs relating to the offence charged, to be by such officer returned with the writ.

SEC. 17. If no examination shall have been filed with the commitment or in the office of the clerk, and none be produced by the committing magistrate, upon the exhibition of the writ of habeas corpus to him, as provided in the preceding section, such magistrate shall appear in person, at the time and place to which the writ is returnable, and if he fail to do so, may be proceeded against by attachment.

ART. III.—HEARING.

SECTION
1. Time for, to be set.
2. Party may deny the truth of the return, or allege any facts necessary, upon oath.
3. Amendments of return or allegations.
4. Court or judge to hear evidence.
5. When party discharged.
6. In what cases to be remanded.
7. What other persons not to be discharged.
8. Slaves not to be discharged.
9. In what cases prisoner discharged, when committed by competent authority.
10. In other cases, no power to discharge.
11. In criminal cases, examination and information to be read in evidence.
12. No person to be discharged from imprisonment under indictment.
13. In criminal matters, prisoner not discharged for informality, &c. in the commitment.
14. When court to hear other evidence in criminal matters.
15. Order and certificate of discharge.
16. Recognizance, on admission to bail.
17. Bail not given, prisoner to be remanded, and order thereon.
18. On production of such order, bail may be taken thereafter.
19. How and to whom remanded, when not discharged or bailed.
20. Prisoner remanded or let to bail, what papers delivered to person making the return.
21. Disposition to be made of prisoner, pending the hearing.
22. When court, &c. may proceed to hearing without presence of prisoner.
23. Proceedings in such case.
24. Obedience to order of discharge, how enforced.
25. Sheriff, &c. not liable to civil action for such discharge, and proceedings if sued therefor.

SEC. 1. Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment, or restraint, not exceeding five days thereafter, unless the prisoner shall request a longer time; or the court or judge may proceed to such hearing immediately, as the circumstances of the case may require.

SEC. 2. The party brought before any court or judge, by virtue of any writ of habeas corpus, may deny the material facts set forth in the return, or allege any fact to show either that his detention or imprisonment is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath.

SEC. 3. The return, and the allegations made against it, may be amended by leave of the court or judge before whom the writ is returned at any time, that thereby material facts may be ascertained.

SEC. 4. The court or judge shall proceed to examine into the cause of confinement or detention, and shall settle the facts in a summary way by hearing the testimony as well on the part of the persons interested as of the prisoner and the person who holds him in custody, and shall dispose of the prisoner as the case shall require.

SEC. 5. If no legal cause be shown for the imprisonment or restraint, or for the continuation thereof, the court or judge shall forthwith discharge the party from the custody or restraint under which he is held.

SEC. 6. It shall be the duty of the court or judge forthwith to remand the prisoner, if it shall appear that he is held in custody either :

First, By virtue of any process issued by any court or judge of the United States, in a cause where such court or judge has exclusive jurisdiction.

Second, By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction.

Third, For any contempt specially and plainly charged in the commitment by some court, judge or body politic, having authority by law to commit for contempt so charged ; and,

Fourth, Where the time during which such party may be legally detained has not expired.

SEC. 7. No person shall be discharged under the provisions of this act, who is in custody or held by virtue of any legal engagement, or enlistment in the army or navy of the United States ; or who being subject to the rules and articles of war, is confined by any one legally acting under the authority thereof ; or who is held as a prisoner of war under the authority of the United States ; or who is in custody for any treason, felony, or other high misdemeanor, committed in any other State or Territory, and who by the constitution and laws of the United States ought to be delived up to the legal authorities of such State or Territory.

SEC. 8. No negro or mulatto held as a slave in this State, or lawfully held as a fugitive from service from another State or Territory, shall be discharged, nor shall his right of freedom be had under the provisions of this act.

SEC. 9. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, or issued by any officer in the exercise of judicial proceedings before him, such prisoner can only be discharged in one of the following cases :

First, Where the jurisdiction of such court or officer has been exceeded either as to matter, place, sum or person.

Second, Where, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to his discharge.

Third, Where the process is defective in some matter or substance required by law, rendering such process void.

Fourth, Where the process, though in proper form, has been issued in a case or under circumstances not authorized by law.

Fifth, Where the process, though in proper form, has been issued or executed by a person who is not authorized to issue or execute the same, or where the person having the custody of such prisoner, under such process, is not the person empowered by law to detain him.

Sixth, Where the process is not authorized by any judgment, order or decree, or by any provision of law.

SEC. 10. No court under this act shall, in any other matter, have power to inquire into the legality or justice of the process, judgment, decree or order of any court, legally constituted, nor into the justice or propriety of any commitment for contempt, made by any court, officer, or body corporate, according to law, and plainly charged in such commitment, as hereinbefore provided.

SEC. 11. Where any person brought before any court or judge upon a writ of habeas corpus, shall have been committed for any criminal or supposed criminal matter, the examination and information taken and certified by the committing magistrate, shall be read in evidence before the court or judge, before whom the prisoner is brought.

SEC. 12. No person imprisoned on an indictment, found in any court of competent jurisdiction, or by virtue of any process or commitment to enforce such indictment, can be discharged under the provisions of this act; but if the offence be bailable he may be let to bail, and if the offence be not bailable he shall be remanded forthwith.

SEC. 13. Where the imprisonment is for any criminal or supposed criminal matter, the court or judge before whom the prisoner shall be brought, under the provisions of this act, shall not discharge him for informality, insufficiency or irregularity of the commitment; but if from the examination taken and certified by the committing magistrate, or other evidence, it appear, that there is sufficient legal cause for commitment, he shall proceed to take bail, if the offence be bailable, and sufficient bail be offered; and if not, he shall recommit the prisoner to jail.

SEC. 14. Where the offence is clearly and specifically set forth in the warrant of commitment, no evidence, other than the examination taken and certified therewith, shall be received for or against the prisoner, unless such examination has not been taken and certified according to law, in which case the committing magistrate may be examined, if desired by the prisoner, as to the evidence on which the commitment was founded, and thereupon the court or judge shall proceed to bail, discharge or remand, as the circumstances of the case may require; and in the absence of all such evidence, the prisoner shall not be discharged, but may be bailed or remanded, according to the circumstances of the case.

SEC. 15. If it appear that any person brought before a court or judge, under the provisions of this act, is entitled to be discharged, the court or judge shall make an order in writing, commanding those who have the prisoner in custody, to discharge him forthwith, and shall also deliver to the person discharged a certificate of such discharge.

SEC. 16. If the prisoner be held to answer for a bailable offence, the court or judge shall determine in what sum bail shall be given, and cause the prisoner to enter into a recognizance with sufficient security or securities, which recognizance shall be taken, certified and returned, as provided by law in like cases.

SEC. 17. If any such prisoner shall not give the required bail, the court or judge shall make an order remanding him, and shall by such order direct the sum in which bail shall be taken, and the court at which he is required to appear, and that on such bail being entered into in conformity with such order and the provisions of law, the prisoner shall be discharged.

SEC. 18. Upon the production of such order to any judge or clerk of a court of record, he shall be authorized to take the recognizance, with sufficient security, in the sum directed; conditioned for the appearance of the prisoner at the court designated in such order.

SEC. 19. If a prisoner be not entitled to his discharge, and be not bailed, the court or judge before whom the proceedings are had, shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be entitled thereto: if not so entitled, then he shall be committed to the custody of such officer or person as by law is entitled thereto.

SEC. 20. When any prisoner shall be let to bail or remanded, all examinations and documents which have been produced by the officer or person making the return, shall be re-delivered to him; the testimo-

ny of witnesses examined, the recognizances of all such as testify any thing material taken, and the examination duly certified and returned, as required by law in like cases.

SEC. 21. Until judgment be given upon the return, the court or judge before whom the party shall be brought may either commit such party to the custody of the sheriff of the county in which the proceeding is had, or place him in such care and custody as his age or circumstances may require.

SEC. 22. Whenever from sickness, or other infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the court or judge before whom the writ is returnable, the person in whose custody he is may state this fact in his return, verifying the same by his oath, and such court or judge, if satisfied of the truth of such allegation, and the return be otherwise sufficient, shall proceed thereon to dispose of the matter, in the same manner as if the prisoner were brought before him, except as in the next section is provided.

SEC. 23. If in the case mentioned in the last preceding section it appear that the prisoner is legally imprisoned, or restrained, and not bailable, such court or judge shall proceed no further therein. If he ought to be held to answer for a bailable offence, an order shall be made and proceeded on as provided by this act in cases where the prisoner is remanded for want of bail, and when it appears the prisoner is entitled to his discharge, the court or judge shall make an order to that effect.

SEC. 24. Obedience to any order for the discharge of a prisoner, granted pursuant to the provisions of this act, may be enforced by the court or judge granting such order, by attachment, in the same manner as herein before provided in case of failure to make return of a writ of habeas corpus, and with like effect in all respects.

SEC. 25. No sheriff or other person shall be liable to any civil action, for obeying any order of discharge made according to the provisions of this act, and if any action shall be brought against him for suffering any person committed to his custody, to go at large pursuant to any such order, he may plead specially any such order of discharge, or he may plead the general issue, and give such order in evidence in bar of such action.

ART. IV.—GENERAL PROVISIONS.

SECTION
1. In what cases warrant may issue, in the nature of a summary habeas corpus.
2. In what case such warrant may contain an order for the arrest of the person imprisoning.
3. Service and return of, and proceedings on, such warrant.
4. Proceedings as to person arrested thereby.
5. In what cases person discharged may be again imprisoned.
6. In what case party not to be removed from county where confined.
7. Proceedings when person remanded obtains second writ.
8 When not discharged on such second application.
9. Penalty for refusal to issue writ, or delay.
SECTION
10. Penalty for judge recommitting, &c. after due discharge.
11. Of officer served with writ, refusing copy of process, &c. of commitment, &c.
12. Refusing to obey writ by producing body and making return.
13. Evading service by removing prisoner, &c.
14. Arresting after discharge.
15. Person aiding to violate this act.
16. Additional punishment of fine and imprisonment.
17. Right of action for penalties not to cease by death of either party.
18. Pleadings in such action.
19. Conviction for misdemeanor, no bar to civil action for damages.
20. Provisions to apply to every writ of habeas corpus.

SEC. 1. When it shall appear by satisfactory proof that any person is illegally imprisoned or restrained of his liberty, and that there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can be relieved by a writ of habeas corpus, any court or judge authorized to issue such writs, may issue a warrant reciting the facts, and directed to any sheriff, coroner, constable, or other person, commanding him to take the prisoner, and to bring him forthwith before such court or judge, to be dealt with according to law.

SEC. 2. Where the proof shall also be sufficient to justify the arrest of the person having such prisoner in his custody as for a criminal offence, committed in the taking or detaining such prisoner, the warrant shall also contain an order for the arrest of such offender.

SEC. 3. The warrant shall be executed according to the command thereof, and when the prisoner shall be brought before the court or judge, the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

SEC. 4. If the person having such prisoner in custody, shall be brought before a court, or a judge, as for a criminal offence, he shall be examined, committed, bailed, or discharged in like manner as in other criminal cases of like nature.

SEC. 5. No person who has been discharged by order of any

court or judge, upon a habeas corpus issued pursuant to the provisions of this act, shall be again imprisoned, restrained or kept in custody for the same cause: but it shall not be deemed the same cause; first, if he shall have been discharged from commitment on a criminal charge, and afterwards committed for the same offence, by a legal order or process of the court, wherein he shall be bound by a recognizance to appear, or in which he shall be indicted or convicted for the same offence. Second, if after a discharge for defect of proof, or for any material defect, in the commitment, in a criminal case, the prisoner is again arrested on sufficient proof, and committed by legal process for the same offence. Third, if in a civil suit the party has been discharged, for illegality in the judgment, as herein before specified, and is afterwards imprisoned by legal process for the same cause of action. Fourth, if in a civil suit, having been discharged from commitment on original, mesne or final process, he shall be afterwards committed on execution in the same cause, or any process in any other cause, after such first suit shall have been discontinued. Or fifth, where the discharge in any cause has been ordered on account of the non-observance of any of the forms required by law, and the party is again arrested for imprisonment by legal process, for sufficient cause, and according to the forms required by law.

SEC. 6. No person charged with a criminal offence, shall be removed by a writ of habeas corpus out of the county in which he is confined at any time within fifteen days next preceding the term of the court at which such prisoner ought to be tried, except it be to convey him into the county where the offence with which he is charged is properly cognizable.

SEC. 7. If a prisoner remanded under the provisions of this act, shall obtain a second writ of habeas corpus, it shall be the duty of the officer or other person on whom the same shall be served to return therewith the order remanding the prisoner, and if it appear that the prisoner was remanded for an offence adjudged not bailable, the prisoner shall forthwith be remanded without further proceedings.

SEC. 8. It shall not be lawful for any court or judge, on a second writ of habeas corpus, to discharge the prisoner, if he is clearly and specifically charged in the order remanding him, or in the warrant of commitment, with a criminal offence; but the prisoner on the return of such writ, shall be bailed or remanded to prison according to the circumstances of the case.

SEC. 9. If any court or judge authorized by the provisions of this

act to grant writs of habeas corpus, shall refuse to issue any such writ when legally applied for in a case where such writ may lawfully issue, or shall unreasonably delay the issuing of such writ, every member of such court who shall have assented to such refusal or delay, and every such judge out of court, shall forfeit to the party aggrieved a sum not exceeding one thousand dollars.

SEC. 10. If any judge solely or as a member of any court, or in the execution of any order, judgment or process, shall knowingly recommit, imprison, or restrain of his liberty, or cause to be recommitted, or imprisoned, or restrained of his liberty, for the same cause (except as in this act provided,) any person so discharged, or shall knowingly aid or assist therein, he shall be deemed guilty of a misdemeanor, and shall forfeit to the party aggrieved a sum not exceeding one thousand dollars.

SEC. 11. Any officer or other person having the custody of any prisoner, committed on any civil or criminal process, who shall refuse to give such prisoner a copy of the process, order or commitment, by virtue of which such person is held or detained, within six hours after a demand by the prisoner, or any one on his behalf, shall be deemed guilty of a misdemeanor, and shall forfeit to the party aggrieved five hundred dollars.

SEC. 12. If any officer or other person upon whom a writ of habeas corpus shall be duly served, shall neglect or refuse to obey the same by producing the party therein named, and making a full and explicit return to the writ, as required by this act, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party aggrieved a sum not exceeding one thousand dollars.

SEC. 13. Any person having in his custody, or under his power, any person for whose relief a writ of habeas corpus shall have been issued, or who would be entitled to a writ of habeas corpus, to inquire into the cause of his detention, who shall, with the intent to elude the service of such writ, or to avoid the effect thereof, transfer such prisoner to the custody, or place him under the control or power of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor, and shall pay the party injured five hundred dollars.

SEC. 14. Every one who knowing that any person has been discharged by competent authority on a habeas corpus, shall, contrary to the provisions of this act, arrest such person again for the same cause,

shall be deemed guilty of a misdemeanor, and shall pay to the party aggrieved five hundred dollars.

SEC. 15. Every person who shall knowingly aid or assist in a violation of any of the provisions of this act, shall deemed guilty of a misdemeanor.

SEC. 16. Every person convicted of a misdemeanor, under the provisions of this act, shall in addition to the penalty incurred and to be paid to the party aggrieved, be punished by fine and imprisonment, or both, at the discretion of the court, in which he shall be convicted, such fine not exceeding one thousand dollars, nor such imprisonment to be longer than one year.

SEC. 17. The right of action for the penalties declared by this act, to be incurred and to be paid to the party aggrieved, shall not cease by the death of either party, but such penalty may be sued for, and recovered, by the executors or administrators of the aggrieved party against the offender or his executors or administrators.

SEC. 18. The defendant in any such action may plead the general issue, and give the special matter in evidence.

SEC. 19. The conviction and punishment of any person for a misdemeanor under any of the provisions of this act, shall be no bar to a civil action for damages.

SEC. 20. The several provisions contained in this act shall be construed to apply, (so far as they may be applicable, and except where otherwise provided,) to every writ of habeas corpus, authorized to be issued by any statute of this State.

[Approved: March 5, 1838.]

CHAPTER 74.

HORSES.

SECTION
1. Any seed horse, unaltered mule or jack over the age of two years, found running at large, penalty, and how recovered, and damages, how recovered, &c.
2. May be taken up, and if not claimed within two days, castrated, and payment therefor, how recovered.
3. Such castration, how done.
4. If such animal cannot be taken up, he may be killed after notice given, and what such notice shall be.

SEC. 1. If any seed horse, or any unaltered mule or jack, over the age of two years, be found running at large, the owner shall be fined, for the first offence, three dollars; and for every subsequent offence, not exceeding ten dollars, to be recovered by action of debt in the name of any person who shall sue for the same; one half to his own use, and the other to the county's; which action may be prosecuted before any justice of the peace of the county where the offence is committed, and shall also be liable for all damages that may be sustained by the running at large of any such seed horse, jack or mule, to be recovered by action of debt, before any court having jurisdiction thereof.

SEC. 2. Any person may take up any such seed horse, mule or jack found running at large, and if not claimed within two days, may castrate him; for which service he shall be entitled to recover of the owner of any such horse, mule or jack, three dollars, which may be recovered in an action of debt, before any justice of the peace of the county.

SEC. 3. Such castration shall be done in the usual manner, so as the life of the animal be endangered as little as possible.

SEC. 4. If any such horse, mule or jack be running at large, and cannot be taken up, he may be killed, if notice be first put up at the court house, and at three other of the most public places in the county, for ten days, describing the color, marks and brands, as near as practicable, of the animal, and that he will be killed unless taken away and secured.

[Approved: December 9, 1837.]

CHAPTER 75.

IMPEACHMENTS.

SECTION
1. House of representatives to have sole power of.
To be tried by the senate.
Senators to be on oath or affirmation.
Who shall preside when the governor is impeached.
No person convicted but by a concurrence of two thirds of all the senators elected.
2. House of representatives to cause articles of impeachment to be made out and transmitted to the senate—and to elect managers.

SECTION
3. Person impeached to be suspended from office till acquitted.
4. How vacancies shall be filled *pro tempore*, when officers impeached.
5. Process against accused, how issued and by whom served.
6. How to be served.
7. Accused to have reasonable time to answer, and issue to be made up.
8. Subpœnas for witnesses, and commissions to take depositions.
9. Depositions, how to be taken, and what notice to be given.
10. Accused not appearing, senate to proceed *ex parte*.

SECTION
11. Oath to be taken by senators.
12. Senate to proceed to hear and determine, to decide questions of law, and punish for contempt.
13. Accused to be heard. Votes to be given *viva voce*, and entered on journal, and two thirds must concur to condemn.
14. Party convicted or acquitted not to bar indictment, &c.
15. Transcript of proceedings and judgment to be made out, attested and deposited in office of secretary of state.
16. Writs of senate, how issued and served.

SEC. 1. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate; and when sitting for that purpose, the senators shall be on oath or affirmation, to do justice according to law and evidence. When the governor shall be tried, the chief justice of the supreme court shall preside, and no person shall be convicted without the concurrence of two thirds of all the senators elected.

SEC. 2. When the house of representatives shall be satisfied that there is good cause to impeach any officer, they shall cause articles of impeachment to be made out in due form against such officer, and transmit the same to the senate, and immediately elect managers to prosecute such impeachment.

SEC. 3. When any officer shall be impeached, he is hereby declared to be suspended from exercising his office, after he shall be notified thereof, until he is acquitted.

SEC. 4. If either of the judges of the supreme or circuit court, the secretary of state, auditor of public accounts, state treasurer or prosecuting attorney of any of the judicial circuits, be impeached and notified thereof, an appointment shall be made by the governor to supply such vacancy, until the impeachment shall be determined; and if the president of the senate be impeached, notice thereof shall be immediately given by the house of representatives to the senate, that another president may be appointed.

SEC. 5. When articles of impeachment shall be presented to the senate, they shall immediately appoint some day for the appearance of the accused, and cause a summons to be issued, signed by the president and countersigned by the secretary, with a copy of the articles of

impeachment annexed, requiring the accused to appear on the day appointed for that purpose, and answer the charges exhibited against him, which shall be served by the sergeant at arms of the senate, or by a special messenger by them appointed, a reasonable time before the day appointed for his appearance.

SEC. 6. Such notice shall be served on the accused personally, if he can be found, and if he cannot be found, then by leaving a copy of such summons and articles of impeachment at his dwelling house or usual place of residence, with some free white member of the family, above the age of fifteen years.

SEC. 7. Upon the appearance of the accused, he shall have reasonable time to answer the impeachment; and when the answer shall be filed, the managers may reply thereto; and when issue shall be joined on any such impeachment, the senate shall appoint a time for the trial thereof.

SEC. 8. The president of the senate, on the application of the respondent, or any of his counsel, or either of the managers, shall issue subpœnas for witnesses, and commissions to take depositions, where the witness is unable to attend from sickness or other infirmity, or where the witness is without the limits of the State.

SEC. 9. Such depositions shall be taken in the same manner, and the same notice shall be given, as where depositions are to be taken in the circuit court.

SEC. 10. If the accused shall not appear after being notified, or after appearing shall fail to answer, the senate may proceed *ex parte*.

SEC. 11. At the time and place appointed for trial, and before proceeding thereon, the president of the senate (or chief justice when presiding,) shall administer to the members of the senate, and the secretary shall at the same time administer to the president (or chief justice) an oath to try and determine the charges, and to do justice according to law and evidence, and no member shall sit or give his vote, until he shall have taken such oath.

SEC. 12. The members being sworn, the senate shall proceed to hear, try and determine such impeachment, and may adjourn the trial to any other time; and the senate shall determine all questions of law arising during the trial, upon the admissibility of evidence, the competency of witnesses or otherwise, and may punish any person for contempt committed towards the senate, or for obstructing the administration of justice on such trial, in as full a manner as any court of record could do for a like contempt toward such court.

SEC. 13. In all such trials, the accused shall have a right to be heard by himself and his counsel, and all votes on any question whatever shall be given *viva voce*, and entered on the journals, and no judgment or sentence of conviction shall be given against any person upon any impeachment without the concurrence of two thirds of the senators elected.

SEC. 14. The party convicted or acquitted shall, notwithstanding such acquittal or conviction, be subject to indictment, trial, judgment and punishment for any indictable offence, according to the law of the land.

SEC. 15. The secretary of the senate shall make out a transcript of the proceedings had on any impeachment, and of the judgment of the senate, whether of conviction or acquittal, which shall be signed by the officer presiding at the trial, and attested by the secretary, and deposited in the office of the secretary of state.

SEC. 16. All writs issued by the senate, shall run in the name of the State of Arkansas, shall be subscribed by the presiding officer, and countersigned by the secretary, and shall be served by the sergeant at arms, or by any special messenger, appointed by the senate.

[Approved: February 20, 1838.]

CHAPTER 76.

INCLOSURES.

SECTION
1. Fields, &c., how to be inclosed.
2. Fences and posts, height of, and how fixed.
3. Rail fences, how high.
4. Sufficiency of fence, how adjudged of.
5. Penalty when animals break inclosures.
6. Fence, how viewed by order of justice.
7. Penalty for killing animals when fence insufficient.
8. Charge of partition fence, how borne and maintained.

SEC. 1. All fields and grounds kept for inclosures, shall be inclosed with a fence sufficiently close, composed of sufficient posts and rails, posts and palings, palisadoes, or rails alone, laid up in the manner commonly called worm fence.

SEC. 2. All fences composed of posts and rails, posts and palings,

or palisadoes, shall be five feet high, and the posts shall be deeply and firmly set in the earth.

SEC. 3. All fences of rails alone, commonly called worm fence, shall be five feet high.

SEC. 4. In all cases, the sufficiency of a fence shall be adjudged by the persons summoned to view such fence, in accordance with the provisions of this act.

SEC. 5. If any horse, cattle, or other stock, shall break into any inclosure, the fence being of the height and sufficiency required by this act, or if any hog, pig or shoat shall break into the same, the owner of such creature shall, for the first trespass, make reparation to the party injured, for the true value of the damages he may have sustained; and for every trespass thereafter, double damages, to be recovered with costs, before any justice of the peace or court having jurisdiction thereof, in the name of the injured party; and for the third offence from any of the beasts aforesaid breaking into such inclosure, the party injured may kill and destroy the beasts so trespassing, without being answerable for the same.

SEC. 6. Upon the complaint of the party injured, to any justice of the peace, of the township, such justice shall issue an order to three disinterested householders of the neighborhood, not related to the parties, reciting the complaint, and requiring them to view the fence where the trespass is complained of, and take a memorandum of the same, and their testimony, in such case, shall be good evidence on the trial, touching the lawfulness of the fence.

SEC. 7. If any person damaged for the want of a sufficient fence, shall hurt, wound, lame, or kill, or cause the same to be done, by shooting, hunting with dogs, or otherwise, any of the creatures in this act mentioned, such person shall be liable to the owner of such creature, for double damages with costs.

SEC. 8. When any person shall inclose any land adjoining another's land already inclosed with a fence, so that any part of the fence first made becomes the partition fence between them, in such case, the charge of such division fence, as far as it is inclosed on both sides, shall be equally borne and maintained by both parties.

[Approved and in force: February 28, 1838.]

CHAPTER 77.

INJUNCTIONS.

SECTION

1. Granted by supreme court, or judge thereof in vacation, to stay waste and proceedings at law throughout the State.
2. By circuit court, or judge in vacation, in same cases, within respective circuits.
3. In what cases master in chancery may grant injunctions.
4. On application to master, what proof required, except for injunctions to stay proceedings before justice of the peace.
5. Injunctions, whether returnable.
6. Proceedings on, where had, and subpœna, whither issued.

NOTICE.

7. To be given before applying for injunction, and how.
8. How when party or agent does not reside in the county.
9. Form of notice, and service, how proved.
10. Manner of service.
11. When notice not required.

SECTION

MISCELLANEOUS.

12. Not granted, where amount in controversy before justice is less than twentyfive dollars.
13. To stay judgment or proceedings at law, to what extent granted.
14. To operate as release of errors.
15. Bill for, to be sworn to.
16. Injunction bond, form of.
17. Bond to be filed, and before whom executed.
18. Clerk not to issue injunction unless on special order.

DISSOLUTION.

19. Damages on, how assessed.
20. Decree thereon, and how enforced.
21. Motions for, how and when made, and depositions thereon, how read.
22. In what case the motion may be continued.
23. No parol evidence on motion.
24. Depositions taken to support or dissolve, to be read on final hearing.

SEC. 1. The supreme court or any judge thereof in vacation, may grant injunctions to stay waste, and proceedings at law throughout the State.

SEC. 2. The several circuit courts in term time, or any judge thereof in vacation, shall have power to grant writs of injunction to stay waste and proceedings at law within their respective circuits.

SEC. 3. The master in chancery in each county shall have power to grant injunctions to stay proceedings at law before any justice of the peace within the county, when the amount in controversy is twentyfive dollars and upwards, and in all other cases if there be no court in session in the county, or judge authorized to grant injunctions, at the time of the application therefor.

SEC. 4. When an application for an injunction in any of the cases mentioned in the concluding clause of the preceding section, shall be

made to the master in chancery, the applicant shall produce satisfactory proof that there is not then any judge of the supreme or circuit court within such county, and if such proof is not produced, the application shall be denied.

SEC. 5. Injunctions shall be returnable to the circuit court of the proper county.

SEC. 6. Proceedings on an injunction to stay proceedings in a suit, or a judgment at law, shall be had in the county where the suit is pending or the judgment was rendered, and the subpœna may be directed in the first instance to any county where the defendant resides.

SEC. 7. Before an injunction shall be granted to stay proceedings at law, the applicant shall give reasonable notice in writing to the adverse party, or to his known agent or attorney, if he has any within the county in which the suit is pending, or the judgment was rendered.

SEC. 8. If the defendant in the bill praying an injunction, does not reside in the county, and has no known agent or attorney within the same, notice shall be put up in the office of the clerk of the circuit court of the county in which the proceedings at law were had, ten days before the application for an injunction.

SEC. 9. The notice shall state the time and place of applying for an injunction, and before whom, or to what court, and the service thereof may be proved by the return of an officer authorized to serve process, or by the affidavit of a witness, or the acknowledgment of a party, his agent or attorney.

SEC. 10. Such notice may be served in the same manner as a summons in a suit at law.

SEC. 11. No notice of an application for an injunction shall be required, when the bill shall be filed in the same court where the proceedings at law were had.

SEC. 12. No injunction shall be granted to stay proceedings at law before a justice of the peace, where the amount in controversy is less than twentyfive dollars.

SEC. 13. No injunction shall be granted to stay any judgment or proceedings at law, except for so much of the recovery, or cause of action, as the complainant shall in his bill show himself equitably entitled to be relieved against, and so much as will cover the costs.

SEC. 14. Every injunction shall operate as a release of errors in the proceedings at law prayed to be enjoined.

SEC. 15. All bills praying injunctions, shall be verified by the affidavit of the complainant.

SEC. 16. No injunction shall be issued in any case until the complainant execute a bond to the adverse party with good and sufficient security in such sum as the court, judge, or master shall deem sufficient to secure the amount or matter to be enjoined, and all damages and costs that may be occasioned by such injunction, conditioned that the complainant will abide the decision which may be made therein, and that he will pay all sums of money, and costs that may be adjudged against him if the injunction be dissolved, either in whole or in part.

SEC. 17. Such bond shall be filed in the office of the clerk of the circuit court to which the injunction may be returnable, and the bond may be entered into before the clerk of the court to which the injunction may be returnable, or before the court, judge or master granting the same.

SEC. 18. No clerk of the circuit court shall issue an injunction granted by any judge in vacation, or master in chancery, unless a special order, approving the security, and requiring the injunction to be issued, shall be endorsed on the complainant's bill.

SEC. 19. Upon the dissolution of an injunction either in whole or in part, when money has been enjoined, the damages thereon shall be assessed by the court, at not less than six nor more than ten per centum on the amount released by the dissolution of the injunction, exclusive of costs, but in all other cases the damages shall be assessed by a jury empanelled for that purpose; if neither party require a jury, the damages may be assessed by the court.

SEC. 20. The court shall enter a decree according to the circumstances of the case, including the damages assessed as aforesaid, and may award execution thereon, or enforce such decree in such other manner as may be proper according to the rules and practice in chancery.

SEC. 21. All motions for the dissolution of injunctions on bill and answer, shall be in writing, and shall be made, and the answer filed, on or before the second day of the term of the court, to which the injunction is made returnable: and on such motions, depositions regularly taken may be read in support of the bill or answer.

SEC. 22. If after a motion for a dissolution of an injunction, the complainant shall satisfy the court, that any material and specified part of the answer is untrue, and that he has witnesses, (naming them) whose testimony can be procured, at the next term of the court, and who will disprove the same, and that, since the filing of the answer, he has

not been able to procure their testimony, the court may continue the motion on payment of costs.

SEC. 23. In addition to the bill and answer, and the affidavits filed therewith, all testimony on such motions shall be depositions taken as in other chancery proceedings.

SEC. 24. Depositions taken to support or dissolve an injunction, may be read in evidence on the final hearing of the cause in which they were taken.

[Approved: March 5, 1838.]

CHAPTER 78.

INSANE PERSONS.

SECTION

1. Probate court to appoint guardians for, &c.
2. Information of, and inquiry, how made.
3. What officers to apply to county court therefor.
4. When court to appoint guardian.
5. Costs thereof, how paid on finding insane.
6. How, when not.
7. New inquisition to be granted, but not after two verdicts.
8. Bond of guardian.
9. New bond and security may be required, and if not given, appointment revoked.
10. Bond, where deposited—and copy to be evidence.
11. Notice of appointment to be published by guardian.
12. Guardian to take charge of and maintain his ward.
13. To take charge of moneys, books, &c.
14. To file inventory, and form thereof.
15. To file new inventories, when.
16. Inventories, how attested and verified.
17. To prosecute and defend actions.
18. To collect and pay.

SECTION

19. Power of court of probate over insane persons and their estate.
20. When guardian may file petition to mortgage, lease or sell real estate.
21. Requisites of the petition.
22. Order accordingly, when granted.
23. Court to give directions therefor.
24. Notice of sale to be given.
25. Sale, how made, and report thereof.
26. Requisites of such report.
27. Guardian to execute deeds.
28. Proceedings, when report disapproved.
29. Lease or mortgage to be approved by the court.
30. Effect of deed, mortgage, &c. so made.
31. Guardian to account and settle.
32. Ward not to be held to bail nor taken in execution.
33. Process and execution, against whom and what issued.
34. Petition for appropriation to support ward.
35. Petition to be accompanied by account, inventory, &c. and verified by oath.
36. Order and warrant for such appropriation.

SECTION
37. For how long made, and not unless guardian account and settle.
38. Petition that ward has become sane, &c.
39. Proceedings thereon.
40. Effect of death of ward.
41. Power of court to remove guardians.
42. Duty of guardian, on removal.
43. Controlling power of probate courts.
44. Power of guardian to confine ward, when violently insane.
SECTION
45. Judge or justice may order such insane person to be confined, in what cases.
46. Expenses of confinement, how paid.
47. Money paid by county may be recovered back.
48. When parents, children or grandchildren of poor, impotent or insane persons, to support them.

SEC. 1. The several probate courts, within their respective counties, shall have power and jurisdiction to appoint, and possess a superintending control over, guardians to take the care, custody and management of idiots, lunatics, habitual drunkards, and persons of unsound mind, who are incapable of conducting their own affairs, and their estates, real and personal, and to provide for the safe keeping of such persons, the maintenance of themselves and their families, and the education of their children, if they have any, in the manner hereinafter directed.

SEC. 2. If any person shall give information in writing to the probate court that any person in their county is an idiot, lunatic, or of unsound mind, as in the preceding section is mentioned, and pray that an inquiry thereof be had, the probate court if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the person so charged to be brought before such court, and inquire into the facts by a jury, if the facts be doubtful.

SEC. 3. Whenever any justice of the county court, sheriff, coroner, or constable shall discover any person to be of unsound mind, (as in the first section of this act,) who resides in the county, it shall be his duty to make application to the probate court for the exercise of its jurisdiction, and thereupon the like proceedings shall be had as in the last preceding section is directed.

SEC. 4. If it be found by the jury that the person so brought before the court, is of unsound mind, or incapable of managing his own affairs, the court shall appoint a guardian of the person and of the estate of such insane person.

SEC. 5. When any person shall be found to be insane, or coming within the provisions of the first section of this act, the costs of the proceedings shall be paid out of his estate, or if that be insufficient, by the county.

SEC. 6. If the person alleged to be insane shall be discharged, the costs shall be paid by the person at whose instance the proceeding was had, unless said person be an officer, acting officially under the provisions of this act, in which case the costs shall be paid by the county.

SEC. 7. The court may, if just cause appear, at any time during the term at which an inquisition is had, set aside the same, and cause a new jury to be summoned to inquire into the facts; but when two juries concur in any case, the verdict shall not be set aside.

SEC. 8. Every such guardian shall, before entering on the duties assigned him, enter into bond to the State of Arkansas, in such sum and with such securities, as the court shall approve, conditioned that he will take due and proper care of such insane person, and manage and administer his effects to the best advantage according to law, and will faithfully do and perform all such other acts, matters, and things, touching his guardianship, as may be prescribed by law, or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

SEC. 9. The court may at any time require of any such guardian, to give a new bond, or additional security, as the circumstances of the case may require, and if any order for that purpose be not complied with, within a reasonable time to be therein mentioned, the appointment of the guardian may be revoked, and another guardian, who will give the bond and security required, appointed.

SEC. 10. Every bond given by such guardian shall be deposited with the clerk of the court making the appointment, and a copy thereof duly certified by such clerk, shall be evidence in all respects as the original.

SEC. 11. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published in some newspaper printed in this State, and continue such publication three weeks successively, or otherwise publish such notice at such time and place, and in such manner as the court shall order.

SEC. 12. Every such guardian shall take charge of the person committed to his charge and provide for his support and maintenance as hereinafter directed.

SEC. 13. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects, books and other evidences of debt, and all writings touching the estate real and personal of the person under his guardianship.

SEC. 14. Within three months after his appointment, such guardian shall make out and file in the office of the clerk of the probate court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, as the same shall have come to his knowledge.

SEC. 15. Whenever any property, belonging to such estate, shall be discovered after the filing such inventory, it shall be the duty of the guardian to file an additional inventory, containing a just and true account of the same from time to time, as the same shall be discovered.

SEC. 16. All such inventories shall be made in the presence of and attested by two credible witnesses of the neighborhood, and shall be verified by the oath of the guardian.

SEC. 17. It shall be the duty of every such guardian, to prosecute all actions, commenced at the time of his appointment, or thereafter to be commenced, by or on account of his ward, and to defend all actions, pending or which may be brought against such ward.

SEC. 18. Every such guardian is authorized and required to collect all debts due, or becoming due to his ward, and give acquittances and discharges thereof, and adjust, settle, and pay all demands, due and becoming due from his ward, so far as his estate and effects will extend, as hereinafter provided.

SEC. 19. Every probate court, by which any insane person is committed to guardianship, may make order for the restraint, support and safe keeping of such person, for the management of his estate, and the support and maintenance of his family, and education of his children, out of the proceeds of his estate; to set apart and reserve for the use of such family, any property, real or personal, not necessary to be sold for the payment of debts; and to let, sell, or mortgage any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

SEC. 20. Whenever the personal estate of any such person shall be insufficient for the discharge of his debts, the maintenance of his family, or the education of his children, it shall be the duty of the guardian to apply by petition to the court by which he was appointed, praying authority to mortgage, lease or sell the whole, or so much of the real estate of his ward as shall be necessary to supply the deficiency.

SEC. 21. The petition shall set forth the particulars, the amount

of the estate, real and personal, of such person, and of the debts by him owing, accompanied by a full, true, and perfect account of the guardianship of the petitioner, shewing the application of the effects that have come to his hands.

SEC. 22. If it appear to the court, upon examination of the matter, that the personal effects are insufficient for the purpose above mentioned, and that the effects have been applied as far as the circumstances of the case render proper, the court may make an order, directing the mortgage, lease, or sale of the whole or such part of the real estate as may be necessary.

SEC. 23. The court making such order, shall direct the time and terms of sale, the mortgage or lease of such estate, and the manner in which the proceeds shall be secured, and the income or produce thereof applied.

SEC. 24. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place and terms of sale, and a description of the property to be sold, to be given in such manner as the court making the same shall direct.

SEC. 25. Such guardian shall, at the time and place appointed for the sale thereof, sell such lands at public vendue to the highest bidder, and make report of his proceeding to the probate court making the order, at the next term thereof.

SEC. 26. The report shall be accompanied by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser of the property sold, or any part thereof, that the same was not purchased for his use or benefit, and that he is in no wise interested in the purchase thereof.

SEC. 27. If the court approve the proceedings, the guardian shall execute a deed to the purchaser, reciting the order of sale, and conveying to the purchaser all the estate, right, title, and interest of such person to the estate sold.

SEC. 28. If the report be disapproved, the court may set aside the sale, and order all money paid to be refunded, and all securities given to be cancelled, and may renew the order of sale, as often as necessary, until the proceedings are approved.

SEC. 29. When the court shall order a lease or mortgage of any estate, no deed or instrument shall be executed for that purpose until the court shall have approved the agreement made by the guardian under such order.

SEC. 30. Every conveyance, mortgage, lease and assurance made

under the order of a probate court, pursuant to the provisions of this act, shall be as valid and effectual as if the same had been executed by such ward in person, when of sound memory and discretion.

SEC. 31. Every such guardian shall once a year, or oftener if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with the court.

SEC. 32. No such ward shall be held to bail, nor his body taken in execution in any civil or penal action.

SEC. 33. In all actions commenced against any such ward, the process shall be served on his guardian, and on judgment against such ward, or his guardian, as such, the execution shall be against his property only, and in no case against his body, nor against the body of his guardian, or his guardian's estate, unless he shall have rendered himself liable thereto by false pleading or otherwise.

SEC. 34. If the estate of any such ward shall be insufficient to pay his debts, to maintain himself and family, or educate his children, his guardian may apply to the probate court, by petition setting forth the particulars, and praying for an appropriation from the county treasury, for the support of his ward.

SEC. 35. The petition shall be accompanied by a true and perfect account of his guardianship, an inventory of his estate and effects, and a list of the debts due from such ward, and shall be verified by the affidavit of the petitioner.

SEC. 36. If the court shall be satisfied that such estate and effects are insufficient for the purpose above specified, such court may order such sum to be paid to the guardian, out of the county treasury, as shall be sufficient to provide for the support of such ward, and cause a warrant to be issued therefor accordingly.

SEC. 37. But no allowance shall be made at any one time for a period longer than one year, nor shall such order be made at any time unless the guardian shall have duly accounted and settled with such court for the moneys and effects which shall have come to his hands, for the support of his ward, out of the county treasury or otherwise.

SEC. 38. If any person shall allege in writing verified by oath, that any person declared to be of unsound mind, or addicted to habitual drunkenness, has been restored to his right mind, or to correct, sober habits, the court by which the proceedings were had, shall cause the facts to be inquired into in such manner as the court may direct.

SEC. 39. If it be found that such person has been restored or

reformed to his right mind, he shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to him.

SEC. 40. In case of the death of any such ward while under guardianship, the power of the guardian shall cease, and the estate descend and be distributed in the same manner as if such ward had been of sound mind, or correct habits, and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his legal representative.

SEC. 41. The several probate courts shall have power to remove any such guardian at any time for neglect of duty, misconduct or mismanagement, or for disobedience to any lawful order, and appoint another in his place.

SEC. 42. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

SEC. 43. The probate courts respectively shall have power to control the guardian of any such ward, in the management of the person and estate, and the settlements of his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery.

SEC. 44. If any person by lunacy shall be furiously mad, or so far disordered in his mind, as to endanger his own person, or the person or property of others, it shall be the duty of his guardian, or other person under whose care he may be, and who is bound to provide for his support, to confine him in some suitable place, until the next term of the probate court for his county, which shall make such order, for the restraint, support and safe keeping of such person, as the circumstances of the case shall require.

SEC. 45. If any such person of unsound mind as in the last section is specified, shall not be confined by those having charge of him, or if there be no person having such charge, any judge of a court of record, or any two justices of the peace of the county may cause such insane person to be apprehended, and may employ any person to confine him in some suitable place, until the probate court shall make further order thereon, as in the preceding section specified.

SEC. 46. The expenses attending such confinement shall be paid by the guardian out of the estate of the ward, or by the person bound

to provide for and support such insane person, or the same shall be paid out of the county treasury.

SEC. 47. In all cases of appropriations out of the county treasury for the support and maintenance, or confinement of any insane person, the amount thereof may be recovered by the county from any person who by law is bound to provide for the support and maintenance of such insane person, if there be any such of ability to pay the same.

SEC. 48. The father and mother of poor, impotent or insane persons, shall maintain them at their own charge, if of sufficient ability, and the children and grandchildren of poor impotent or insane parents or grand parents, shall maintain them at their own charge if of sufficient ability.

[Approved: February 20, 1838.]

CHAPTER 79.

INSOLVENTS.

SECTION

1. Imprisonment for debt abolished.
2. Petition to take benefit of this act, to whom and how presented.
3. Schedule attached to petition, form and requisites of.
4. Notice to creditors, of petition.
5. How prisoner discharged from custody until hearing upon his application.
6. Petition, when determined.
7. Oath to be administered to petitioner.
8. Order of discharge and insolvency, in what case made.
9. To be sufficient warrant to jailer to discharge the debtor.
10. Sheriff's certificate to be filed before discharge.
11. Trustee for creditors, how appointed.
12. Oath and bond of trustee.
13. Property of debtor to vest in trustee, for the creditors.
14. Sheriff to deliver property, &c. to trustee.
15. Power of trustee to sue and defend.
16. Sale of debtor's property, how made.

SECTION

17. Money therefrom, how disposed of.
18. Effect of judgment or execution after application.
19. Assignment, transfer, &c. by debtor after arrest, void.
20. Trustee to appoint a day for liquidating demands, and notice thereof, how given.
21. Trustee to examine on oath, and his decision final, unless jury required.
22. Issue before jury, tried in circuit court.
23. Dividends, how made.
24. Creditors, when precluded.
25. Trustee, how punished or removed.
26. Compensation of trustee.
27. Overplus to be paid to debtor.
28. Till trustee appointed, sheriff to act as such.
29. Power of trustee or sheriff to administer oaths.
30. Proceedings, papers, &c. to be filed in court.
31. When debtor summoned to appear and answer charges, and what.

SECTION
32. Issues upon charges to be tried by jury when debtor does not appear.
33. Proceedings when debtor appears.
34. Penalty of debtor if found guilty.
35. Charges of creditor against third persons, what.
36. Proceedings on such charges.
37. Penalty of third person, found guilty.
38. Debtor afterwards arrested on different debt, how discharged.
39. Estate afterwards acquired, not liable for debts previous to discharge.
40. Penalty for false swearing.

SEC. 1. The person of the debtor, except where there is strong presumption of fraud, shall neither be imprisoned nor continued in prison, after he shall have delivered up his estate for the benefit of his creditors, in the manner, and under the conditions, prescribed in this act.

SEC. 2. Any debtor imprisoned, or liable to be imprisoned, for any debt or damages, may present his petition, in writing, to the circuit court in term time, or to the judge thereof in vacation, or to the presiding judge of the county court of the county in which such debtor may be imprisoned or liable so to be, offering to deliver up to the use of his creditors all his property, (wearing apparel for himself and family excepted,) and praying to be permitted to take the benefit of this act.

SEC. 3. Every such debtor shall annex to, and deliver with, his petition to the court or judge to whom the same shall be presented, a schedule, under oath; containing, first, a full and true account of all his creditors; second, the place of residence of each creditor, if known to such debtor, and if not, the fact to be stated; third, the sum owing to each creditor, the nature of each debt or demand, and whether arising on written security, on account, or otherwise; fourth, the true cause and consideration of such indebtedness, in each case, and the place where such indebtedness accrued; fifth, a statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt; sixth, a full and true inventory of all the estate, real, personal, and mixed, in law and equity, of such debtor, and of all the books, vouchers, and securities relating thereto; seventh, a full statement of the cause of the insolvency of such debtor.

SEC. 4. Upon the presentation of such petition and schedule, the court or judge shall make an order that personal notice of such application be given to the creditors, or so many of them as can be served therewith, or direct that notice of such application be published in some newspaper printed in this State, for such time as such court or judge may direct, not less than twenty days before such application.

SEC. 5. If the debtor be imprisoned, or liable to be taken in execution, such court or judge may direct him to be discharged from custody, on his entering into bond, with good and sufficient security, to be approved by the court or judge, to the plaintiff at whose suit he is arrested, in double the amount of the debt, damages, and costs, conditioned that he will be and appear before the circuit court of the proper county, on the first day of the next term of said court held for said county, and surrender himself to prison, in case, on his said appearance, he does not comply with every thing required by this act to procure his discharge.

SEC. 6. All applications for the benefit of this act, shall be determined at the first term of the circuit court after making the same, unless for good cause shown, where the petition shall have been presented twentyfive days before the first day of such term; and where the petition shall have been presented less than twentyfive days before the first day of such term, the same shall be determined at the second term.

SEC. 7. On the appearance of the creditors, or their neglect to appear on notice, at the time and place appointed, the court may administer the following oath: "I do swear that the account of my creditors, and the inventory of my estate, which are annexed to my petition, are, in all respects, just and true; and that I have not, at any time, or in any manner whatsoever, disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have in no instance credited or acknowledged a debt for a greater sum than I honestly and truly owed, and that I have not paid, secured to be paid, or compounded with any of my creditors, with a view fraudulently to obtain the benefit of this act."

SEC. 8. If the court shall be satisfied that such debtor has not concealed or conveyed to any person, for the use of himself, or any of his family or friends, or whereby to expect any future benefit to himself or his family, any part of his estate, effects, or credits, and he shall answer all and every question, or interrogatories, touching his estate and losses, or the means of his insolvency, by word or in writing, as shall be put to him by the court or any creditor, and shall deliver to the sheriff of the county a copy of his petition and schedule, and all his property in possession therein mentioned, together with his books, title papers, evidences of debts, and contracts of every kind whatsoever, an order shall be made discharging and exempting such debtor from arrest and imprisonment, for all contracts, debts, judg-

ments, and liabilities, of whatsoever nature, contracted or entered into before the application, and set forth in his petition and schedule.

SEC. 9. Such order shall be a sufficient warrant to the sheriff or jailer to discharge such debtor from custody.

SEC. 10. No such debtor shall be discharged by the court, until he shall file in the court the certificate of the sheriff, that he has received all the property in possession mentioned in the petition and schedule of such debtor, together with his books, title papers, evidences of debts, and contracts of every kind whatsoever.

SEC. 11. The circuit court may appoint a trustee for the benefit of the creditors of any petitioning debtor.

SEC. 12. Every such trustee shall, before entering on the duties of his trust, take an oath faithfully to discharge the duties thereof, and give bond to the State, in such amount, and with such security, as the court shall approve, conditioned for the faithful discharge of his duties.

SEC. 13. Upon filing such bond with the clerk of the circuit court, all the property, and all claims due or to become due to such debtor, shall be vested in such trustee, for the benefit of his creditors.

SEC. 14. The sheriff or other person in whose hands or possession any property of the insolvent debtor may be, shall deliver the same to such trustee, and, also, all books, writings, contracts, title papers, and evidences of debt.

SEC. 15. The trustee so appointed may sue for and recover, in his own name, any property or debt vested in him by this act, and may prosecute to judgment any suit commenced by such debtor, and defend all actions arising on contracts which such debtor might have defended.

SEC. 16. The circuit court may, from time to time, order the sale of any property of such debtor, in such manner, and on such terms, as may be deemed expedient.

SEC. 17. The money arising from the estate of such debtor shall be divided among his creditors, according to the amount of their respective demands allowed by the trustee, after paying all expenses accruing in the settlement of the estate, and fees of all officers concerned therein.

SEC. 18. No judgment which shall be entered up, or contract entered into, after the application of the debtor aforesaid, shall be a lien upon his real property; nor shall any execution have any effect upon the real and personal property of such debtor, except execution actually delivered to the officer, to be served before such application.

SEC. 19. Every assignment, transfer or conveyance of property, either real or personal, made or executed, or any receipt given for money by the applicant, after his arrest, shall be absolutely void, and of no effect.

SEC. 20. The trustee shall appoint a day, which shall be at least three, and not more than six months, after the discharge of the debtor, upon which he will proceed, publicly, to adjust and liquidate the demands against the estate of such debtor; notice whereof shall be given to all concerned, by advertisements published in some newspaper published in this State, at least once a week, for four weeks.

SEC. 21. The trustee may examine the debtor and creditors, and any other person, on oath, touching any claim; and his decision shall be final, unless a creditor, or some other person interested, shall, before such decision is made on any particular claim, request the same to be referred to a jury.

SEC. 22. The trustee shall certify all such cases to the circuit court of the county, and the court shall order the same to be tried on an issue framed for that purpose.

SEC. 23. The trustee shall, from time to time, make fair and just dividends, according to the provisions of this act, reserving a proportionate part of the debtor's estate to abide the event of the contested claims referred to a jury.

SEC. 24. All creditors who, after being notified as aforesaid, shall not attend at the time and place of adjusting and ascertaining demands against such estate, and on oath lay before such trustee the nature and amount of their demands, shall be precluded from the benefit of said estate.

SEC. 25. If any trustee shall become insolvent, or shall misbehave in any manner, the court may inquire into the same, in a summary way, and shall make such rules and orders as may be necessary, and may punish such trustee for contempt, or remove him from office, and appoint another.

SEC. 26. The circuit court may allow the trustee such compensation as may be deemed reasonable, not exceeding ten per centum on the whole amount of the estate.

SEC. 27. All money and property which may be left, out of any debtor's estate, after payment of all debts and expenses, shall be paid to such debtor, his heirs or assigns.

SEC. 28. Until a trustee shall be appointed, the sheriff of the pro-

per county shall do and perform all the duties enjoined by this act, and shall be subject to the like proceedings as trustees.

SEC. 29. The trustee or sheriff shall have full power and authority to administer all oaths required to be taken or made before him as trustee.

SEC. 30. All the proceedings of the trustee, together with the accounts and vouchers exhibited to him, shall be filed among the records of the court appointing the trustee.

SEC. 31. If any creditor, at or before the time appointed for the hearing of any debtor's application for a discharge under the provisions of this act, or within two years thereafter, shall allege, in writing, to the court to which such application is made, if before final discharge, and if after, then to any court within whose jurisdiction such debtor may be found, either of the following facts: First, that the said debtor hath, directly or indirectly, sold, conveyed, concealed, or otherwise disposed of, or purchased in trust, for himself or any person, any part of his property, or any part of his debts, rights or claims, with intent to deceive and defraud his creditors, or to receive or expect any advantage or profit thereby; second, that he has passed bonds, or other evidences of debts, either without consideration, or on improper consideration; third, that he hath assigned, conveyed or delivered, any of his property, or any of his debts, rights or credits, to any other person, with intent to take the benefit of this act; or, fourth, that he hath given undue or improper preference to any creditor, or to any security,—the clerk of the court before whom such allegations are filed, shall issue a summons, requiring the debtor to appear and answer such allegations.

SEC. 32. Upon a return of the summons served, the court, if the debtor do not appear, shall direct an issue or issues to be made up, and tried by a jury, in a summary way, without the form of an action, to determine the truth thereof.

SEC. 33. If such debtor appear, the court may, at the election of the creditor filing allegations, require the debtor to answer interrogatories touching the matters alleged against him, on oath, or direct an issue to be made up and tried in a summary way, to determine the truth of the same.

SEC. 34. Any debtor who shall be found guilty of any fraud or deceit, or of having given any undue preference as aforesaid, shall be forever deprived of the benefit of this act.

SEC. 35. Any creditor may in like manner file allegations in writing, against any other person, alleging either of the following facts: First, that such debtor hath, directly or indirectly, conveyed, disposed of, or intrusted, to such person, any property, or any part of his debts or effects, rights or claims, with intent to deceive or defraud his creditors, or to secure the same, or any profit or advantage, to such debtor; second, that he has received bonds or other evidences of debt, either without consideration, or on improper consideration; or, third, that such debtor hath conveyed or delivered to such person, by his collusion, any property, goods, debts, rights or claims, or the evidence thereof, with the intent to conceal or secure the same.

SEC. 36. The proceedings on such allegations, shall be had in the same manner as against the debtor, and determined in the same way.

SEC. 37. If such person, upon answer to interrogatories, or by verdict, shall be found guilty of fraud, deceit, or collusion therein, with any debtor, he shall pay the creditors filing the allegations the whole amount due to them by the debtor, with costs of suit, and shall be liable, in like manner, to pay all other creditors; and if himself a creditor, shall lose his debt, and be excluded from all distribution.

SEC. 38. If any debtor discharged according to the provisions of this act, shall be arrested for any pre-existing debt, he may be discharged by any officer authorized to issue a writ of habeas corpus.

SEC. 39. The estate, property, and effects, of any debtor discharged under the provisions of this act, which he shall thereafter acquire, shall not be liable to execution for the payment of debts contracted before such discharge.

SEC. 40. If any debtor shall swear falsely in any proceeding had under this act, he shall be deemed guilty of wilful and corrupt perjury, and shall, on conviction, suffer the pains and penalties thereof.

[Approved: March 3, 1838.]

CHAPTER 80.

INTEREST.

SECTION
1. Rate of legal interest, and in what cases allowed.
2. Rate of conventional interest, and must be fixed in writing.
3. How allowed on judgments or decrees.
4. Judgments to be regulated as to interest by the contract.
5. No higher interest to be received than allowed by this act.
6. And amount so overpaid to be recovered back. Limitation of action therefor.
7. Usurious contracts, &c. to be void.
8. Not to apply to *bona fide* endorsee or holder of bill or note, without actual notice.
9. Person offending, to answer bill for discovery, on oath.
10. Interest, how to be calculated as to time.
11. How on partial payments.
12. Construction, where words "*per annum*" are omitted.

SEC. 1. Creditors shall be allowed to receive interest at the rate of six per centum per annum, when no other rate of interest is agreed upon, for all moneys after they become due by any instrument of the debtor in writing, on money lent, or money due on settlement of accounts, from the day of liquidating or ascertaining the balance due thereon, on money received for the use of another, and retained without the owner's knowledge of the receipt thereof, on money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts, and on all other moneys due and to become due, for the forbearance of payment whereof an express promise to pay interest has been made.

SEC. 2. The parties may agree in writing for the payment of interest not exceeding ten per centum per annum, on money due or to become due upon any contract, whether under seal or not.

SEC. 3. Interest shall be allowed on all moneys due on judgments at law, or decrees in equity, from the day of the rendition thereof, until satisfaction be made by payment or sale of property.

SEC. 4. Judgment or decrees upon contracts bearing more than six per cent. interest, shall bear the same interest as may be specified in such contracts, and the rate of interest shall be expressed in all such judgments and decrees, and all other judgments and decrees shall bear interest at the rate of six per centum per annum, until satisfaction is made as aforesaid.

SEC. 5. No person or corporation shall directly or indirectly take

or receive in money, goods or things in action, or in any other manner, any greater sum or value for the loan or forbearance of any money, goods or things in action, than is in this act prescribed.

SEC. 6. Every person who for any such loan or forbearance shall pay any greater sum or value than is in this act allowed to be received, or his personal representatives, may recover in an action against the person who shall have taken or received the same, or his personal representatives, the amount of money so paid, or value delivered above the rate aforesaid, if such action be brought within one year after such payment or delivery.

SEC. 7. All bonds, bills, notes, assurances, conveyances, and all other contracts or securities whatsoever, whereupon or whereby there shall be reserved, taken or secured, or agreed to be taken or reserved, any greater sum or greater value for the loan or forbearance of any money, goods or things in action, than is prescribed in this act, shall be void.

SEC. 8. The provisions of the preceding section shall not extend to any bills of exchange or promissory notes, in the hands of an endorsee or holder, who shall have received the same in good faith, and for a valuable consideration, and who had not at the time of discounting or receiving such bill or note, or paying such consideration for the same, actual notice that such bill or note had been originally given for a usurious consideration or upon a usurious contract.

SEC. 9. Every person offending against the provisions of this act, shall be compelled to answer, on oath, any bill that may be exhibited against him in chancery for the discovery of any such sum of money, goods or things in action, so taken, accepted or received, in violation of the provisions of this act or any of them.

SEC. 10. For the purpose of calculating interest, a month shall be considered the twelfth part of a year, and as consisting of thirty days; and interest for any number of days less than a month, shall be estimated by the proportion which such number of days shall bear to thirty.

SEC. 11. In calculating interest where partial payments may have been made, the interest shall be calculated to the time when the first payment shall have been made, and such payment shall be applied to the payment of such interest; and if such payment exceed the interest, the balance shall be applied to diminish the principal, and the same course shall be observed in all subsequent payments; but in no case when a payment shall fall short of paying the interest due, at the time

of making such payment, shall the balance of such interest be added to the principal.

SEC. 12. Whenever in any statute, deed, written or verbal contract, or in any public or private instrument whatever, any certain interest is or may be mentioned, and no period of time is stated for such rate of interest to be calculated, interest shall be calculated at the rate mentioned by the year, in the same manner as if the words "per annum," or "by the year," had been added to such rate.

[Approved: February 16, 1838.]

CHAPTER 81.

JAILS AND JAILERS.

SECTION

1. Jail to be kept in each county.
2. Sheriff to have custody thereof and appoint jailer.
3. What prisoners jailer to receive.
4. Penalty for refusing to receive.
5. Expenses and support of criminals, how paid.
6. When prisoner to be supported, &c. by county.
7. Expenses before and after conviction, how paid.
8. Grand jury to examine jail and report.
9. When plaintiff to pay costs of maintenance of prisoner in civil suit.
10. Plaintiff failing to pay after notice, prisoner to be discharged, and arrears, how recovered.
11. Prisoner must first make oath of inability to support himself in prison.
12. Plaintiff may recover of debtor money paid for maintenance.

SECTION

13. Jailers to receive and keep United States prisoners.
14. Penalty of, for failure or neglect therein.
15. United States to pay expenses and fees.
16. When county court may direct guard to be kept.
17. When prisoner committed to jail of another county, and duty of jailer.
18. Sheriff to notify judge thereof.
19. Judge to issue habeas corpus thereon, when and form of.
20. Sheriff or jailer to deliver prisoner.
21. Penalty of sheriff or jailer failing to return such writ with body of prisoner.
22. Fees for committal, and executing such writ.
23. Expenses in such case, how paid.
24. Sheriff where imprisoned, and coroner to have charge, &c.

SEC. 1. There shall be kept in good and sufficient condition and repair, a common jail, in each county in this State, to be located at the seat of justice of the county.

SEC. 2. The sheriff of each county in this State shall have the custody, rule and charge of the jail within his county, and all prison-

ers committed in his county, and he may appoint a jailer for whose conduct he shall be responsible.

SEC. 3. It shall be the duty of the jailer to receive from constables and other officers all persons who may be apprehended by such constables, or other officers for offences against this State, or who shall be committed by any competent authority.

SEC. 4. If any sheriff or jailer shall refuse to receive any such persons, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars.

SEC. 5. Every person who may be committed to the common jail of the county, by lawful authority, for any criminal offence or misdemeanor, if he shall be convicted thereof, shall pay the expenses in carrying him to jail, and also for his support while he remains there: and the property of such person shall be subject to the payment of such expenses.

SEC. 6. Whenever any person committed to jail, upon any criminal process, under any law of this State, shall declare on oath that he is unable to buy or procure necessary food, the sheriff or jailer shall provide such prisoner the food necessary for his support, for which he shall be allowed a reasonable compensation, to be fixed by the county court: and if from the inclemency of the season, sickness of the prisoner or other cause, the sheriff or jailer shall be of opinion, that fuel, additional clothing or bedding, is necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation.

SEC. 7. The expenses of imprisoning any prisoner, committed on a criminal charge, which accrue before conviction, shall be paid in the same manner as the costs of prosecution are directed to be paid, and the expenses which accrue after the conviction shall be paid as directed in the act regulating criminal proceedings.

SEC. 8. It shall be the duty of the grand jury at each term of the circuit court, to visit the jail of their county, and examine into the condition thereof, and inquire into the treatment of the prisoners, and report thereon to the court, and in their report recommend such improvements as may be necessary to put the jail in complete repair, and render it secure.

SEC. 9. When any person is confined in jail on execution or original process, or is surrendered in discharge of his bail in any civil suit, and neither property nor money of the person imprisoned, can be

found sufficient to pay for his maintenance, the plaintiff at whose suit such person may have been imprisoned shall pay for his maintenance at the rate of twentyfive cents per day, to be paid to the sheriff or jailer.

SEC. 10. It shall be the duty of the sheriff or jailer to notify the plaintiff at whose suit such person may have been imprisoned, his agent or attorney of record, of the inability of the person so imprisoned to pay for his subsistence, and if such plaintiff, his agent or attorney, shall fail within ten days after the service of such notice to make it appear that the defendant has sufficient means to support himself in prison, or shall fail to pay the *per diem* sum for his maintenance as aforesaid, and shall be in arrear for two weeks, the sheriff or jailer may discharge such prisoner, and recover from the said plaintiff the amount in arrears, together with costs, before any justice of the peace having jurisdiction thereof.

SEC. 11. No person shall be discharged from prison under the provisions of the preceding section, unless he shall first make oath of his inability to support himself in prison.

SEC. 12. The plaintiff shall always be entitled to recover from his debtor, in an action of debt, the full amount of any money he may have paid for his maintenance in prison, and the same may be collected and made out of any property he may thereafter possess.

SEC. 13. It shall be the duty of the keeper of the jail in each county within this State, to receive into his custody all persons who may from time to time be committed to his custody, under the authority of the United States, and he shall safely keep every such prisoner, according to the warrant or precept of such commitment, until he shall be discharged by the due course of the laws of the United States.

SEC. 14. The keeper of every jail shall be subject to the same penalties for any neglect or failure of duty herein, as he would be subject to by the laws of this State for the like neglect or failure in case of a prisoner committed under the authority of the laws of this State.

SEC. 15. The United States shall pay for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner, who shall under their authority be committed thereto, and shall also pay to the jailer such fees as he would be entitled to for like services rendered by virtue of the laws of this State during the time such prisoner shall be confined, and shall support all prisoners that may be committed for criminal offences.

SEC. 16. Whenever the sheriff of any county of this State shall

be of the opinion that the jail of his county is insufficient to secure the prisoners that may be therein committed, or that may be from time to time committed thereto, it shall be his duty to give notice thereof to the county court, and said court, if the jail cannot be immediately repaired and made safe and secure, may by an order to be entered on the minutes of said court, direct the sheriff to employ a guard, sufficient for the guarding and safe keeping of the prisoners, but such guard shall in no instance exceed three persons.

SEC. 17. The sheriff of any county in this State, where there is no jail in his county, or the jail of such county is insufficient, may commit any person in his custody, either on criminal or civil process, to the nearest jail in some other county in the same circuit, and it shall be the duty of the sheriff or keeper of the jail of such county, to receive such person so committed, and him safely keep, subject to the order of the circuit court of the county in which such prisoner was committed.

SEC. 18. It shall be the duty of the sheriff committing any person to another county for any criminal offence, forthwith to notify the judge of the circuit court of the county in which such prisoner is to be tried, of the committing of such person, to the jail of such other county, and transmit to such judge at the same time the cause of the caption and detention of such person.

SEC. 19. It shall be the duty of such judge, at least fifteen days preceding the first day of the next term of the circuit court of the county in which such person is to be tried, to issue a writ of habeas corpus, directed to the sheriff or keeper of the jail of the county in which such person may be committed, commanding him to have the body of such person, together with the day and cause of his caption and detention, before the circuit court of the proper county for the trial of such offence, on the first day of the next term of said court.

SEC. 20. It shall be the duty of such sheriff or jailer, to deliver or cause to be delivered such prisoner, on the day and at the place mentioned in such writ.

SEC. 21. Any sheriff or jailer, failing or neglecting to make return of such writ and have there the body of such person, according to the command of such writ, shall be deemed guilty of a contempt, and shall be liable to be attached therefor, and shall forfeit to the person or party any sum not exceeding five hundred dollars, to be recovered by the injured party by an action on the case founded on this act.

SEC. 22. The sheriff shall be entitled, for committing such person, and for executing such writ of habeas corpus, to the like fees as are provided by law for similar services.

SEC. 23. In all cases where a prisoner is committed from another county for a criminal offence under the provisions of this act, such county shall pay the expenses in the same manner as if the commitment had been in the county where the offence is committed: and in civil suits the plaintiff or defendant shall pay the expenses in the same manner as if the imprisonment had taken place in the county where the suit was commenced.

SEC. 24. The sheriff may be imprisoned in the jail of his own county: and for the time he shall be confined, the coroner shall have the custody, rule, keeping and charge of the jail, and shall, by himself and his securities, be answerable for the faithful discharge of his duties in that office.

[Approved: March 3, 1838.]

CHAPTER 82.

JOINT AND SEVERAL OBLIGATIONS AND CONTRACTS.

SECTION
1. Joint, to survive against heirs, executors, &c. of joint debtor or obligor dying.
2. All dying, to survive against heirs of all.
3. To be considered joint and several.
4. Suit may be brought against surviving obligor and heir, &c. jointly.
5. Creditor to have but one satisfaction.
6. Survivorship of real and personal estate abolished.

SEC. 1. All joint debts or obligations shall survive against the heirs, executors and administrators of such joint debtor or obligor as may die before the discharge of any such joint debt or obligation.

SEC. 2. Where all the joint debtors or obligors shall die before the discharge of a joint debt or obligation, the debt or obligation shall survive against the heirs, executors and administrators of all such joint debtors or obligors.

SEC. 3. Joint obligations shall be construed to have the same effect as joint and several obligations, and may be sued on, and recoveries had thereon, in like manner.

SEC. 4. Suits may be brought against the surviving obligor, and the heir, executor or administrator of the deceased obligor, at the same time.

SEC. 5. No creditor on any joint, or joint and several obligation, shall have more than one satisfaction and costs in one suit.

SEC. 6. All survivorships of real and personal estate are forever abolished.

[Approved: February 14, 1838.]

CHAPTER 83.

JUDGMENTS.

SECTION
1. Judgments given against any person, at the time deceased, how vacated and revived.
2. This act to apply to judgments in the territorial courts.

SEC. 1. In all cases where judgment may heretofore have been, or may hereafter be rendered in favor of or against any person deceased at the time of the rendition of such judgment, the court in which such judgment may have been, or may hereafter be rendered, shall at any time after the rendition thereof, on the application of the legal representatives of such deceased party, or any other person interested therein, set aside such judgment, and cause judgment to be rendered for or against such legal representatives, as the case may be.

SEC. 2. The preceding section shall be so construed as to apply to judgments rendered in any of the courts of the late Territory of Arkansas, and the application to set any such judgment aside, shall be made in the court of this State, which may have succeeded the court in which such judgment may have been rendered.

[Approved: December 13, 1837.]

CHAPTER 84.

JUDGMENTS AND DECREES.

SECTION

LIEN OF.

1. How made a lien.
2. Rendered in circuit court, lien on real estate in same county.
3. Liens when to commence, and how long to continue.
4. What title obtained by sale of lands under junior judgment.
5. Money arising from such sale, how applied.
6. *Sci. fa.* to revive lien.
7. How served and where.
8. Order when defendant not found.
9. Publication thereof, how made.
10. If no cause shown, lien to be revived, and for how long.
11. Judgment on *sci. fa.* from what time to be a lien.

DEATH OF PARTIES TO.

12. Plaintiff dying, judgment or decree to survive, and to whom.
13. Proceedings thereon in such case.
14. One or more of several defendants dying, judgment or decree to survive, and against whom.
15. Proceedings thereon by execution in such case.
16. By *sci. fa.*

SECTION

17. Execution in such case, against whom.
18. Executor or administrator party dying, judgment or decree how revived.

SATISFACTION.

19. How acknowledged.
20. Penalty for failure to acknowledge.
21. Who may enter satisfaction.
22. Clerk to enter such acknowledgment.
23. If by agent, his authority to be filed.
24. Entry of satisfaction to be a discharge and release.
25. On failure to enter satisfaction, application may be made to the court.
26. Order thereupon, and costs.
27. Space to be left on margin of record of judgment or decree.
28. Entry of disposition of judgment or decree to be made on margin.
29. Judgment docket to be kept.
30. Manner of entering judgment or decree therein.
31. Clerk to enter such judgments and decrees, and make index.
32. Penalty for failure so to do.
33. Record of decree for conveyance of real estate.
34. Construction of term "real estate."

SEC. 1. Judgments and decrees of the supreme court shall, upon the filing of a transcript thereof, in the circuit court of the county in which the suit originated, on which judgment or decree is entered, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in such county, from the filing such transcript.

SEC. 2. Judgments and decrees rendered in the circuit court shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.

SEC. 3. Liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided.

SEC. 4. A sale of lands under a junior judgment, shall pass the title of the defendant, subject to the lien of all prior judgments and decrees then in force.

SEC. 5. The money arising from such sale, shall be applied to the payment of the judgment under which it may have been made.

SEC. 6. The plaintiff or his legal representatives may at any time before the expiration of the lien on any judgment, sue out a scire facias to revive the same.

SEC. 7. The scire facias shall be served on the defendant or his legal representatives, terre-tenants, or other person occupying the land, and may be directed to and served in any county in this State.

SEC. 8. If the defendant cannot be found, the court shall make an order, briefly setting forth the nature of the case, and requiring all persons interested to appear and show cause why such judgment or decree should not be revived, and the lien continued, on or before the second day of the next term of said court.

SEC. 9. A copy of such order shall be put up at the court house door of the county in which such judgment or decree may have been rendered, four weeks before the commencement of the term of the court at which the parties are required to appear.

SEC. 10. If upon service or publication of the scire facias, as required in the preceding section, the defendant, or any other person interested do not appear and show cause why such judgment or decree shall not be revived, the same shall be revived, and the lien continued for another period of three years, and so on from time to time as often as may be necessary.

SEC. 11. If a scire facias be sued out before the termination of the lien of any judgment or decree, the lien of the judgment revived shall have relation to the day on which the scire facias issued; but if the lien of any judgment or decree shall have expired before suing out the scire facias, the judgment of revival shall only be a lien from the time of the rendition of such judgment.

SEC. 12. If one or more plaintiffs in a judgment or decree die before the same is satisfied or carried into effect, the judgment or decree, if for money or concerning personal property, shall survive to the executors or administrators of such deceased party, and if concerning real estate, to his heirs or devisees.

SEC. 13. In each of the preceding cases, execution may be sued out in the name of the surviving plaintiff, for the benefit of himself and the legal representatives of the deceased party: or such judgment or

decree may be revived in the name of such legal representatives and the surviving plaintiff, and execution may be sued out jointly.

SEC. 14. When there are several defendants in a judgment or decree, and some of them die before the same is satisfied or carried into effect, the judgment or decree, if for money or concerning personal property, shall survive against the executor or administrator of the deceased party, and if concerning real estate, against his heirs or devisees.

SEC. 15. In each of the cases mentioned in the preceding section, execution may be issued in the name of the surviving plaintiff, for the benefit of himself and the legal representatives of any deceased plaintiff, or in the name of the surviving plaintiff and the representatives of any deceased plaintiff, against any surviving defendant.

SEC. 16. Such judgment or decree may be revived against the representatives of any deceased defendant, by scire facias in the name of the surviving plaintiff, and the representatives of such as are deceased.

SEC. 17. Executions may be issued against the surviving defendant and the representatives of the deceased defendants, or such of them as are jointly made parties.

SEC. 18. If any executor or administrator be plaintiff or defendant in any judgment or decree, or shall die, resign or be dismissed before the same is satisfied or carried into effect, the judgment or decree may be revived by or against the administrator de bonis non in manner aforesaid.

SEC. 19. When any judgment or decree is satisfied, otherwise than by execution, the party in whose favor the same was rendered, shall, within sixty days after receiving satisfaction, enter and acknowledge such satisfaction, before the clerk of the court in which such judgment or decree may have been rendered.

SEC. 20. If the person receiving satisfaction for any such judgment or decree shall neglect or fail to enter satisfaction within the time prescribed in the preceding section, such person shall forfeit and pay to the person against whom such judgment or decree may have been entered, any sum not exceeding one hundred and fifty dollars, nor less than five, to be recovered in an action of debt founded on this act.

SEC. 21. Satisfaction of a judgment or decree may be entered by the plaintiff in person, by his attorney of record, or by an agent duly authorized in writing for that purpose, under the hand and seal of the plaintiff.

SEC. 22. Upon the acknowledgment of satisfaction of any judg-

ment or decree, the clerk shall enter the same in his minutes, which shall be signed by the person making the acknowledgment, and be attested by the clerk.

SEC. 23. When the entry of satisfaction is made by an agent, his authority shall be filed in the office of the clerk of the court in which the judgment or decree may be.

SEC. 24. Satisfaction entered in accordance with the preceding provisions of this act, shall forever discharge and release the judgment or decree.

SEC. 25. If the person receiving satisfaction of any judgment or decree shall neglect or refuse to acknowledge the same within the time prescribed by this act, the party interested may, on notice given to the adverse party or his attorney, apply to the court to have satisfaction entered.

SEC. 26. If the court shall be satisfied that the plaintiff, his agent or attorney, has received full satisfaction of such judgment or decree, an order shall be made directing the clerk to enter satisfaction on the same, which shall have the same effect as if it had been acknowledged by the party: and the costs attending such application shall be recovered of the party so refusing, by execution as in other cases.

SEC. 27. Clerks of courts of record in rendering or entering judgments or decrees in the judgment docket, shall leave a space or margin on the record, in which to enter a memorandum of the satisfaction or setting aside of any such judgment or decree.

SEC. 28. When satisfaction of a judgment or decree shall be acknowledged or entered by order of court, or satisfaction shall be made by execution, or such judgment or decree shall be reversed or set aside, the clerk shall enter in the margin of the judgment docket, opposite such judgment or decree, a memorandum of the disposition thereof, the date, and the book and page in which the evidence of such disposition is entered on record.

SEC. 29. The clerks of the several courts of record in this State shall procure and keep in their several offices, a well bound book to be known as the judgment docket, in which all judgments and decrees, whether rendered by the court or by confession, shall be entered in the order of their date.

SEC. 30. The clerk, in recording any final judgment or decree in the judgment docket, shall set forth the names of the parties, the date of the judgment or decree, its nature, the amount of debt, damages,

and costs, with a reference to the book and page in which such judgment or decree was originally entered.

SEC. 31. It shall be the duty of the clerk of every court of record, immediately after the rendition of any judgment or decree, to enter on record the same in the judgment docket, and it shall also be his duty to make an alphabetical index to such docket, by the name of the person against whom such judgment or decree was entered.

SEC. 32. If any clerk shall fail to comply with the provisions of this act, he shall forfeit and pay any sum not exceeding one hundred dollars, at the discretion of the court of which he is clerk, for the use of the county.

SEC. 33. In all cases where any court of chancery shall decree a conveyance of real estate, or that real estate pass, the party in whose favor the decree is made shall cause a copy thereof to be recorded in the recorder's office of the county in which the lands passed or to be conveyed lie, within one year after the making of such decree: and if such decree be not recorded within such time, it shall be void as to all subsequent purchasers without notice.

SEC. 34. The term "real estate" as used in this act, shall be construed to include all estates and interest in lands and tenements, whether legal or equitable, liable to be sold under execution.

[Approved: March 5, 1838.]

CHAPTER 85.

JURORS.

SECTION

1. Courts to order sheriffs to summon.
2. County court, duty of to give list of grand jurors to sheriff.
3. In what case sheriff to summon grand jury without list from county court.
4. Persons summoned as grand jurors not attending, their places how filled.
5. Qualifications of grand jurors.
6. How summoned.
7. How many to be summoned.
8. How a grand juror may be indicted.
9. Qualifications of petit jurors.
10. Challenge for disqualification.

SECTION

11. Affinity or consanguinity, to what extent a disqualification.
12. No exception allowed after jury sworn.
13. Who are exempt from serving as jurors.
14. Persons licensed, but not practising as attorneys, not exempt.
15. Who are to serve on juries.
16. Penalty for failure to attend as juror.
17. For officer excusing jurors when summoned.
18. Struck jury, how obtained.
19. Notice of striking such jury to be given.

SECTION
20. Clerk to make out list of jurors to be stricken.
21. Manner of striking.
22. Venire then to issue.
23. Jury, how selected from such panel.
24. Costs of striking jury, how paid.
25. Juries may find special verdicts.
26. Oath of petit jurors in civil cases.

SEC. 1. All courts before whom jurors are required, may order the sheriff or other officer, to summon a sufficient number of jurors.

SEC. 2. It shall be the duty of the county court of each county, at the first term of such court, after the adjournment of the circuit court, to make out and cause to be delivered to the sheriff, a list of not less than sixteen, nor more than twentythree persons, qualified to serve as grand jurors; and it shall be the duty of the sheriff, within twenty days thereafter, to summon such persons to appear at the next term of the circuit court to be held in and for the county, on the first day of said term, to serve as grand jurors.

SEC. 3. If the term of the county court at which grand jurors ought to be selected shall not be held, it shall be the duty of the sheriff, within twenty days after the time when such court should have been held, to summon not less than sixteen nor more than twentythree persons, qualified to serve as grand jurors, to appear at the first day of the next term of the circuit court of said county, to serve as grand jurors.

SEC. 4. If sixteen of the persons summoned to serve as grand jurors shall not attend on the first day of the circuit court, such court shall order the sheriff forthwith to summon a sufficient number of persons qualified to serve as grand jurors, to supply the deficiency.

SEC. 5. Every grand juror shall be a free white male citizen of this State, over the age of twentyone years, resident of the county, a householder or a freeholder, and otherwise qualified according to law.

SEC. 6. Every grand juror shall be summoned by the sheriff, either personally, or by a written notice left at the residence of such juror.

SEC. 7. Not more than twentythree, nor less than sixteen grand jurors shall be summoned to attend any one court.

SEC. 8. Any grand juror may be indicted by the grand jury of which he is a member; but when any complaint shall be lodged against a grand juror, the foreman shall inform the attorney for the State thereof; and if, on examination, there are grounds for proceeding against such juror, he shall inform the court thereof, and the court shall discharge such juror, and cause another to be summoned, if necessary.

SEC. 9. Every petit juror shall be a free white male citizen of this State, above the age of twentyone years, a resident of the county, and not otherwise disqualified.

SEC. 10. If any person be summoned as a grand or petit juror, who is not qualified as required by law, he may be challenged and discharged, upon such challenge being verified according to law, or by his own oath.

SEC. 11. No person shall serve as a petit juror, who is related to either party to a suit within the fourth degree of consanguinity or affinity.

SEC. 12. No exception against any juror, on account of his citizenship, non-residence, age, or other legal disability, shall be allowed after the jury are sworn.

SEC. 13. No person exercising the functions of a clergyman, practitioner of physic, attorney at law, clerk, or any officer of a court, ferry-keeper, overseer of roads, constable, or any person over the age of sixty years, shall be compelled to serve on a jury.

SEC. 14. Nothing in the preceding section shall be so construed as to exempt any person from serving on juries, who may have been licensed as an attorney at law, and who does not practise the same.

SEC. 15. Service on juries shall be equalized, as nearly as practicable, among the citizens liable to be summoned as jurors; and all officers shall avoid persons of ill fame, or those who are under the influence of the parties; and grand jurors shall not be compelled to serve on petit juries during the same term.

SEC. 16. If any person summoned as a grand or petit juror, shall fail to attend, he shall be fined in any sum not exceeding one hundred dollars.

SEC. 17. If any officer directly or indirectly take, accept or receive any money, reward or other thing to excuse any person from serving on any jury, or under that pretence, he shall forfeit one hundred dollars, one half to the person who will sue for the same, and the other half to the county, to be recovered by action of debt, in the name of the person who will sue for the same.

SEC. 18. If either party to a suit shall desire a special struck jury, to try any such suit, he may make application to the circuit court in term time, or to the clerk thereof, in vacation, for that purpose; and if such court or clerk shall be satisfied that a struck jury ought to be granted to the party, an order shall be made to that effect, and fixing a time for striking such jury.

SEC. 19. Whenever a special struck jury shall be ordered as aforesaid, the party applying for such jury shall give the adverse party at least five days' notice of the time of striking such jury.

SEC. 20. At the time appointed for striking such jury, the clerk of the circuit court shall appear at his office, and if it shall appear that the notice required in the preceding section has been given, he shall, in the presence of the parties, or such of them as shall attend for that purpose, make out a list of fortytwo persons, qualified to serve as jurors, indifferent between the parties, and best qualified to try such suit or issue.

SEC. 21. The list of persons being so made out by the clerk, shall be presented to the parties, and the party making application for such jury, or his agent or attorney, shall first strike out one of the names, and then the adverse party, his agent, or attorney, shall strike out another, and so alternately, until each party shall have struck out twelve names : but if such adverse party do not attend such striking, then the clerk shall strike for him.

SEC. 22. When each party shall have struck out twelve names, as aforesaid, the clerk shall make out and deliver to the sheriff or other officer a venire facias, on which shall be inserted the names of the remaining eighteen persons, who shall be summoned to try such suit or issue.

SEC. 23. At the trial of such suit or issue, the clerk shall write the names of the eighteen persons summoned as aforesaid, on separate tickets, and place them in some convenient place, and the twelve first drawn, if they stand indifferent between the parties, shall be sworn as the jury to try such cause.

SEC. 24. The party applying for such struck jury shall pay the fees for striking the same, and one dollar per day for each juror attending, and shall have no allowance therefor in the taxation of costs, unless the court shall be of opinion that such cause required such special jury ; in which case the extraordinary expenses shall be taxed in the bill of costs.

SEC. 25. No jury shall be compelled to give a general verdict, so that they find a special verdict, and show the truth of the fact, and require the aid of the court ; but if of their own wills they give a general verdict, the same shall be received.

SEC. 26. The following oath shall be administered to all petit jurors in civil cases : "You and each of you do swear, that you will well and truly try the issue joined between (A. B.) plaintiff, and

(C. D.) defendant, and a true verdict give according to evidence, unless dismissed by the court, or withdrawn by the parties."

[Approved: December 18, 1837.]

CHAPTER 86.

JUSTICES OF THE PEACE.

THEIR ELECTION, POWERS AND DUTIES.

SECTION
1. How and when elected.
2. Term of office.
3. Residence.
4. Heretofore elected, till what time to serve.
5. How many in each township.
6. Elections for, and returns thereof, how conducted and made.
7. Who to be ineligible.
8. Sheriff or coroner not eligible.
9. Divided into new township, powers of.
10. New township not having sufficient justices, governor to appoint, and so when township divided.
11. What jurisdiction throughout county.
12. Persons attempting to break the peace, and refusing to give security, to be committed to prison.
13. Recognizance to keep peace, &c. to be certified to circuit court.
14. Penalty for refusal of, to act.
15. No jurisdiction to try and determine criminal or penal cases against State.
16. Definition of power to punish for contempts.

SECTION
17. Punishment for contempt, measure of.
18. Person committing contempt to be heard, and how.
19. Record to be kept of conviction for contempt.
20. Form of warrant of commitment for contempt.
21. Power to issue subpœnas, what.
22. And on arbitrations, and taking depositions.
23. Resignations of, how to be made.
24. In what cases, and for what offences removable from office.
25. In what manner removed.
26. Dying, removing, &c., papers, &c., how to be disposed of.
27. Penalty for failure to deliver over papers, &c. in such case, and how recovered.
28. Clerk to receipt for docket and papers.
29. Clerk to make transcripts, when required.
30. Judgments of, how to be renewed.
31. *Sci. fa.* to renew, how to be served and returned.
32. In what cases judgment to be renewed.

SEC. 1. The qualified voters of each township in this State, shall, at the time and place of electing members of the General Assembly, elect the justices of the peace for their respective townships.

SEC. 2. Each justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified.

SEC. 3. Each justice of the peace shall reside in the township for which he was elected, during his continuance in office.

SEC. 4. Every justice heretofore elected and commissioned, shall continue to act until his successor shall be duly elected and qualified.

SEC. 5. For every fifty voters in a township, there may be elected one justice of the peace, but each township, however small, shall have two justices of the peace.

SEC. 6. The election of justices of the peace shall, in all respects, be conducted as other elections, and the returns thereof made in the same manner.

SEC. 7. No person shall be eligible to the office of justice of the peace, who is not a citizen of the United States, and who has not been a resident of the township for which he is elected, six months next before his election, if such township has been so long established, but if not, then of the township from which he was taken.

SEC. 8. No sheriff or coroner shall hold the office of justice of the peace.

SEC. 9. When a township shall be divided, and any justice of the peace of the original township shall fall into the new township, he shall continue to discharge the duties of a justice of the peace until his commission expires, in the same manner as if such township had not been divided, only his process shall be in conformity with the name of the township in which he resides.

SEC. 10. Whenever any new township shall be created, and it shall not have its complement of justices of the peace, the governor shall have power to appoint the requisite number, who shall hold their offices till the next election; and when any township shall be divided, and the old township shall not have its number of justices of the peace, the governor shall make up the number, by appointment.

SEC. 11. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows: First, jointly and severally to cause to be kept all laws made for the preservation of the peace. Second, to cause to come before them, or any of them, persons who break the peace, and commit them to jail, or bail them, as the case may require. Third, to arrest and cause to come before them persons who attempt to break the peace, and compel them to give security for their good behavior, or to keep the peace, or both.

SEC. 12. If such persons refuse to give security, they shall be committed to prison until they find the same.

SEC. 13. Every recognizance so taken for keeping the peace or good behavior, shall be certified to the next circuit court.

SEC. 14. If any justice of the peace shall refuse to act, in any

criminal matter brought before him, or shall refuse to issue any criminal process, when properly demanded, or shall refuse to issue process in any civil case, when the legal fee for issuing the same has been tendered, he shall be deemed guilty of a misdemeanor in office, and shall pay to the party injured any sum not less than ten dollars, to be recovered by action of debt.

SEC. 15. A justice of peace shall in no case have jurisdiction to to try and determine any criminal case, or penal offence against the State.

SEC. 16. In the following cases, and no other, a justice of the peace may punish as for contempts persons guilty of the following acts: First, disorderly, contemptuous and insolent behavior towards such justice of the peace whilst engaged in the trial of a cause, or in rendering a judgment, or in any judicial proceeding, which shall tend to interrupt such proceedings, or impair the respect due to his authority; second, any breach of the peace, noise, or other disturbance tending to interrupt the official proceeding of such justice; third, resistance unlawfully offered in the presence of the justice, to the execution of any lawful order or process issued by him; fourth, for the disobedience of any process issued by him, requiring the attendance of a witness.

SEC. 17. Punishments for contempts in the foregoing cases, may be by fine not exceeding thirty dollars, or by imprisonment in the county jail not exceeding five days, at the discretion of the justice; but no person shall remain in prison for the non-payment of a fine.

SEC. 18. No person shall be punished for a contempt before a justice of the peace, until an opportunity has been given him to be heard in his defence, and for that purpose the justice may issue a warrant to bring the offender before him.

SEC. 19. Upon the conviction of any person for a contempt, the justice shall make up a record of the proceedings on such conviction, stating therein the particular circumstances of the offence and the judgment rendered thereon.

SEC. 20. The warrant of commitment for any contempt shall set forth the particular circumstances of the offence, or it shall be void.

SEC. 21. Justices of the peace shall have power to issue subpœnas for witnesses, in all cases cognizable before the circuit or county courts, or the courts of probate or justices of the peace.

SEC. 22. In all matters submitted to arbitrators, and in all cases

when it may be necessary for the taking of depositions, justices of the peace may issue subpœnas.

SEC. 23. All resignations of justices of the peace shall be in writing, and addressed to the clerk of the county court, who shall immediately inform the governor of such resignation.

SEC. 24. Every justice of the peace who shall be guilty of bribery, perjury, or other infamous crime, or convicted of a wilful misdemeanor in office, by indictment, shall be removed from office.

SEC. 25. The court before whom any justice may be tried and convicted, for any of the offences in the preceding section, shall enter up an order removing such justice from office; and from the time such order of removal shall be entered, all the authority of such justice shall cease.

SEC. 26. Whenever a justice of the peace shall resign, die, move out of his township, or be otherwise disqualified, he or his executor or administrator shall, within ten days thereafter, deliver to the clerk of the circuit court of his county, all dockets, records, books, papers and documents appertaining to his office, or relating to any suit, matter or controversy committed to him in his official capacity.

SEC. 27. If any such justice, or his executor or administrator, shall fail to deliver his docket, and other papers, within the time specified in the preceding section, he shall forfeit and pay any sum not less than ten dollars, nor more than one hundred dollars, one half thereof for the use of the person who shall sue for the same, and the other half for the use of the county, to be recovered by action of debt, on this statute, in the name of any person who shall sue for the same.

SEC. 28. On the receipt of such docket and papers, the clerk of the circuit court shall give the person delivering the same a receipt therefor, and shall file the said docket and papers in his office, and shall note the time when they were filed.

SEC. 29. The clerk of the circuit court, on the application of any person interested in any judgment, or other proceeding, in any such docket, shall make and deliver to such person a full and complete transcript of such judgment or proceeding.

SEC. 30. On the presentation of the transcript of any such judgment, to any justice of the peace of the township, in which the defendant in such judgment may reside, such justice shall thereupon issue a scire facias, requiring such defendant to appear and show cause why such judgment shall not be renewed, and execution issue thereon, at a

time and place therein expressed, which shall not be more than thirty days from the date of such scire facias.

SEC. 31. Such scire facias may be served and returned in the same manner as a summons, and shall be served at least five days before the return day thereof.

SEC. 32. If such defendant shall fail to appear on the return day of such scire facias, or appearing shall fail to show sufficient cause why such judgment shall not be renewed and execution issue thereon, such justice shall enter a renewal of such judgment, and issue execution thereon, for the amount of the judgment and costs.

[Approved: December 13, 1837.]

CHAPTER 87.

JUSTICES OF THE PEACE.

PROCEEDINGS BEFORE, IN CIVIL CASES.

SECTION

JURISDICTION.

1. Power of, to hear, try and determine.
2. Jurisdiction of what actions.
3. Effect of bringing such action in circuit court.
4. In what actions no jurisdiction.
5. Jurisdiction co-extensive with county.

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6. In what townships actions to be brought.
7. Of attachment, in what townships.
8. Against several defendants.
9. Where defendant to attachment has property in different townships.
10. When suits to be brought before justice of adjoining township.

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11. Docket to be kept, and form of.
12. Entries in, how made.
13. Suits before, how instituted.

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15. Non-resident plaintiff to give security for costs, before commencing suit.
16. When to give security after suit commenced.
17. Instruments of writing to be filed.

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18. When lost or destroyed, affidavit thereof to be filed.
19. Proof of such loss or destruction to be made, and how.
20. How disproved.
21. Bill of particulars to be filed, before writ issued.
22. Requisites of process.
23. Summons, when issued, &c.
24. Form of.
25. Service of summons.
26. *Warrant*, on what affidavit to issue.
27. How directed, and substance thereof.
28. Form of.
29. Service of.
30. In what cases the defendant to be taken to another justice.
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32. How long detained.
33. When person deputized to serve process, how, and return, how made.
34. Defendant may make payment to constable, and suit discontinued.
35. Return on process, how made.
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39. How appointed, and responsible for costs.
40. *Defendants*, how to defend.
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46. How long justice to wait after time specified in summons.
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48. When allowed, and when not.
49. Notice of, to be given, and how.
50. Writing, or bill of particulars, to be filed for set-off.
51. Affidavit to be filed when writing lost, &c.
52. Judgment and execution on plea of.
53. Judgment, when against executor, &c. plaintiff, on plea of set-off.
54. Actions of trespass, where title in question, carried to circuit court.
55. Proceedings thereon in circuit court.
56. Proof there required of plaintiff.

CONTINUANCES.

57. Adjournment of case by justice.
58. In suit commenced by warrant, justice not to adjourn, on his own motion.
59. When adjourned on application or by consent.
60. Affidavit required on such application.
61. Limit of adjournment, and at whose costs.
62. In suits commenced by warrant, adjourned by plaintiff, or by consent, defendant discharged from custody.
63. By defendant, he may be discharged on giving recognizance.
64. New recognizance not required on second adjournment.
65. Proof required of plaintiff in an action on such recognizance.

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SEC. 1. Every justice of the peace shall have power to hear, try and determine all actions in this act enumerated, according to law and equity.

SEC. 2. Every justice of the peace shall have jurisdiction over the following actions and proceedings: First, actions of debt and assumpsit, and all other actions founded upon contract, when the debt or balance due, or damages claimed, including interest, shall not exceed one hundred dollars; second, actions of trespass, and trespass on the case, for injuries to persons or to real or personal property, wherein the damages claimed shall not exceed one hundred dollars; Third, all actions for any penalty not exceeding one hundred dollars, given by any statute of this State; and, fourth, to take and enter judgment on the confession of a defendant, where the amount confessed shall not exceed the amount of one hundred dollars.

SEC. 3. If any suit properly cognizable before a justice of the peace, be brought in any of the circuit courts of this State, the plaintiff may recover judgment therein; but the costs of such suit shall be adjudged against him, unless, at the time of filing his declaration in the office of the clerk of the circuit court, he shall file an affidavit that he verily believes that his demand against the defendant exceeds the sum of one hundred dollars.

SEC. 4. No justice of the peace shall have cognizance, first, of any action against any rightful executor or administrator, or any corporation; nor, second, of any action of replevin, nor of any action of covenant, slander, malicious prosecution, or false imprisonment, nor of any action where the title to any lands shall come in question.

SEC. 5. Every justice of the peace shall have jurisdiction co-extensive with the county for which he may be elected or appointed.

SEC. 6. Every action cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the township, either, first, wherein the defendant resides, or if there be one or more defendants residing in different townships, then in the township where one of them resides; or, second, in the township in which the plaintiff resides, and the defendant may be found: but if a defendant in any action is a non-resident of the county, or has absconded from his usual place of abode, the action may be brough in any township where he may be found.

SEC. 7. Every action instituted by attachment shall be brought before some justice of the township wherein the property of the defendant may be found.

SEC. 8. If there are several defendants jointly liable to a suit, residing in different townships, the suit may be brought in any such township against all such defendants, and the constable of the township in which the suit may be brought, shall serve the process in the several townships wherein said defendants may reside.

SEC. 9. If any defendant in a suit instituted by attachment, has property in several townships in the same county, such attachment may be issued against the property of such defendant, wherever it may be found, in the county.

SEC. 10. Whenever there shall be no justice within the township where any suit cognizable before a justice ought to be brought, or where all the justices of such township are interested in any such suit, or otherwise disqualified by law from trying the same, every such suit may be brought before some justice of any adjoining township in the same county.

SEC. 11. Every justice of the peace shall keep a docket in which he shall enter, first, the titles of all causes commenced before him; second, the time when the first process was issued against the defendant, and the particular nature thereof; third, the time when the parties appeared before him, either without process, or upon the return of process; fourth, a brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off be pleaded, a similar statement of the nature of such set-off, and the amount claimed; fifth, every adjournment, stating at whose request, and at what time; sixth, the time when the trial was had, stating whether the same was by jury or by the justice; seventh, the verdict of the jury; eighth,

the judgment rendered by the justice, and the time of rendering the same; ninth, the time of issuing an execution, and the name of the officer to whom delivered, and the amount of the debt, damages, and costs, as the same was endorsed on the execution; tenth, the fact of an appeal having been asked and allowed.

SEC. 12. The several items in the preceding section enumerated, together with all other entries specially required by this act to be made in the docket, shall be entered under or opposite to the title of each cause to which they respectively relate, and in addition thereto, the justice may enter any other proceeding had before him in the cause, which he may think proper to enter in such docket.

SEC. 13. Suits may be instituted before a justice, either by the voluntary appearance and agreement of the parties, or by process.

SEC. 14. The process for the institution of a suit before a justice shall be either a summons, a warrant against the person, or an attachment against the property of the defendant.

SEC. 15. Whenever the plaintiff, is a non-resident of the county, the justice may require of him security for costs before the institution of the suit.

SEC. 16. Whenever a suit is instituted by a non-resident of the county, the justice shall, on the application of the defendant, and may without such application, order the plaintiff to give security for the costs of such suit; and if the plaintiff refuse to comply with the order, the justice shall dismiss his suit.

SEC. 17. Whenever any suit shall be founded on any instrument of writing, purporting to have been executed by the defendant, such instrument shall be filed with the justice, before any process shall be issued in the suit.

SEC. 18. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the plaintiff to file with the justice the affidavit of himself or some other creditable person, stating such loss or destruction, and setting forth the substance of such instrument.

SEC. 19. If any suit or set-off be founded on any lost or destroyed instrument of writing, the party relying on such lost or destroyed instrument shall be required, upon the trial or hearing of the cause, to prove such loss or destruction, either by his own oath, or by other competent testimony; and if, upon such trial or hearing, it shall appear that the same was intentionally put away or destroyed, the demand or set-off founded on such instrument shall be rejected.

SEC. 20. Whenever a party to a suit shall be permitted to prove, by his own oath, the loss or destruction of such instrument of writing, in order to admit other proof of the contents thereof, the adverse party may also be examined to disprove such loss or destruction and the amount of such instrument.

SEC. 21. In every suit founded on an account, a bill of the items of such account shall be filed with the justice, before any process shall be issued in the suit.

SEC. 22. All process issued by justices of the peace, shall run in the name of "The State of Arkansas," be dated on the day it is issued, and signed by the justice granting the same.

SEC. 23. In all cases not otherwise provided for, the process in all suits commenced before a justice, shall be a summons, which shall be directed to the constable of the township in which the justice who granted the same resides, and shall command him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in the summons, not less than six nor more than thirty days from the date thereof, to answer the complaint of the plaintiff.

SEC. 24. The summons may be in the following form:

"COUNTY OF ——, ss.

"THE STATE OF ARKANSAS,

"*To the constable of —— township, in —— county,* GREETING:

"You are hereby commanded to summon —— ——, to appear before the undersigned, one of the justices of the peace of —— township, in the county of ——, on the —— day of ——, 18—, at ten o'clock in the forenoon, at ——, in the same township, to answer the complaint of —— ——. Given under my hand, this —— day of ———, 18—.

A. B., *J. P.*"

SEC. 25. Every summons shall be served at least five days before the day of appearance therein mentioned; and it shall be executed, first, by reading the same to the defendant; or, second, by delivering a copy thereof to the defendant; or, third, by leaving a copy of such summons at his usual place of abode, with some white person who is a member of his family, over the age of fifteen years.

SEC. 26. A justice of the peace shall issue a warrant in every case where he is satisfied, from the affidavit of the plaintiff, or of any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant; and that the defendant is about to remove

out of the county, or to abscond from his usual place of residence, so that the plaintiff will be in danger of losing his demand, unless such warrant be granted.

SEC. 27. Every warrant shall be directed to the constable of the township wherein the justice resides, and shall command him to take the defendant, and bring him forthwith before the justice who issued the same, at a place to be named in such warrant, to answer the complaint of the plaintiff.

SEC. 28. The warrant may be in the following form:

"COUNTY OF ———, SS.

"THE STATE OF ARKANSAS,

"*To the constable of* ——, *in* —— *county*, GREETING:

"You are hereby commanded to take —— ——, and bring him forthwith before the undersigned, one of the justices of the peace of —— township, in the county of ——, at ——, in the same township, to answer the complaint of —— ——. Given under my hand, this —— day of ———, 18—. A. B., *J. P.*"

SEC. 29. A warrant shall be served by arresting the defendant, and taking him forthwith before the justice who issued the same.

SEC. 30. If, on the return of the warrant, the justice be absent, or unable to try the cause, or it be made appear, by the affidavit of the defendant, that such justice is a material witness for the defendant in the cause, or is near of kin to the plaintiff in the suit, stating therein in what degree, the constable shall forthwith take the defendant to the nearest justice in the same township, who shall take cognizance of the cause, and proceed therein, as if the warrant had been issued by himself.

SEC. 31. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the constable, until the justice shall direct his release.

SEC. 32. The defendant shall in no case be detained longer than twelve hours from the time he shall be brought before the justice, unless within that time the trial of the cause be commenced, or unless it be delayed at the instance of the defendant.

SEC. 33. Every justice issuing any process authorized by this act, upon being satisfied that such process cannot be executed for the want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an endorsement upon such process to the following effect:

"At the risk and request of the plaintiff, I authorize ——— to execute and return this writ. A. B., *J. P.*"

And the person so empowered shall thereupon have all the authority of a constable in relation to the execution of such process, shall be subject to the same obligations, shall receive the same fees for his services, and shall make his return under oath.

SEC. 34. If at any time after the commencement of suit, the defendant pay to the constable the full amount of the claim, and the costs which have accrued, the suit shall be discontinued, or if it be further prosecuted, the plaintiff shall pay all costs that may accrue after such payment.

SEC. 35. Every constable serving any process authorized by this act, shall return thereon, in writing, the time and manner of the service, and shall sign his name to the return.

SEC. 36. If any constable fail to execute any process to him delivered, or make a false return, such constable, for every such offence, shall pay to the party injured twenty dollars, and all the damages such party may have sustained by reason thereof, to be recovered in an action of debt, founded on this act.

SEC. 37. Any plaintiff in a suit, except persons under twentyone years of age, may appear and conduct his own suit, either in person or by attorney.

SEC. 38. No suit shall be instituted by an infant plaintiff, until a next friend for such infant shall have been appointed.

SEC. 39. The justice, whenever requested, shall appoint some suitable person who will consent in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein.

SEC. 40. Every defendant, except persons under twentyone years of age, may appear and defend the same in person and by attorney.

SEC. 41. After the service and return of process against an infant defendant, the suit shall not be prosecuted any further, until a guardian for such defendant be appointed.

SEC. 42. Upon the request of such defendant, the justice shall appoint some person who will consent thereto in writing, to be the guardian of the defendant in the defence of the suit.

SEC. 43. If the infant defendant shall not appear on the return day of such process, or if he neglect or refuse to nominate such guardian, the justice may, on the application of the plaintiff, appoint any discreet person as such guardian.

SEC. 44. The consent of such next friend or guardian shall be filed with the justice.

SEC. 45. The guardian appointed for the defendant to defend such suit, shall not be responsible for the costs thereof.

SEC. 46. Upon the return of a summons duly served, the justice shall wait three hours after the time specified in said summons for the appearance of the parties, unless they shall sooner appear.

SEC. 47. When both parties appear before the justice, either upon the return of the process, or upon their voluntary appearance without process, the justice shall, on the application of the defendant, and may, without such application, require of the plaintiff a brief, verbal statement of the nature of his demand.

SEC. 48. A defendant may set off any demand which he has against the plaintiff, in all cases where such set-off is allowed by the statute of this State regulating set-offs, except in the following cases: First, when the demand to be set off exceeds the jurisdiction of a justice of the peace; or, second, when it is founded upon an instrument of writing, executed by the plaintiff, and assigned to the defendant, and it shall not be made to appear, on the trial of the cause, that the defendant had, before the commencement of the suit, given the plaintiff notice of such assignment.

SEC. 49. In order to entitle a defendant to set off any demand, he must give notice thereof to the plaintiff, either verbal or written, before the jury is sworn or the trial is submitted to the justice.

SEC. 50. When a set-off is founded upon an instrument of writing, executed by the plaintiff, or his testator or intestate, or upon an account, he must, at the time of giving such notice, file with the justice such instrument or a bill of the items of such account.

SEC. 51. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the defendant to file with the justice an affidavit similar to that required of a plaintiff upon instituting a suit before a justice on a lost or destroyed instrument of writing.

SEC. 52. If the amount of the set-off duly established be equal to to the plaintiff's debt, judgment shall be entered for the defendant, with costs; if it be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only, with costs; and if it be more than the plaintiff's debt, the defendant shall have judgment for the excess, with costs, and execution shall be awarded, subject to the same stay as upon a judgment in a suit brought by such defendant.

SEC. 53. Whenever a set-off is established in a suit brought by executors or administrators, exceeding the demand of the plaintiff, the judgment shall be against them in their representative character, and shall be evidence of a debt established, but no execution shall issue thereon.

SEC. 54. If in a suit for trespass upon any land and tenements, the defendant, before the jury is sworn, or the trial submitted to the justice, file an affidavit, setting forth that in the trial of the cause, the title of the lands and tenements to which the trespass is alleged to have been committed, will come in question, the justice shall make an entry thereof in his docket, and all further proceedings in the case shall cease, and the justice shall certify and return to the circuit court of the same county a transcript of all the entries made in his docket in the case, together with the process, and all other papers filed therein, in the same manner, and within the same time, as on an appeal.

SEC. 55. Upon the filing of the papers and proceedings in the office of the clerk, the court shall become possessed of the cause, and proceed therein to final judgment as upon an appeal.

SEC. 56. Upon the trial in such court, the plaintiff shall only be required to prove himself entitled to, or in possession of, the lands and tenements on which the trespass is alleged to have been committed, and no other bar to the action shall be pleaded by the defendant, except the plea of title.

SEC. 57. A justice of the peace, without the application of either party, may, if it be necessary, adjourn a cause, not exceeding thirty days for any one adjournment.

SEC. 58. A justice shall in no case adjourn a cause commenced by warrant, on his own motion.

SEC. 59. A justice of the peace, on the application of either party, on good cause shown, may adjourn a cause, not exceeding sixty days for any one adjournment, and may adjourn for a longer period with the consent of both parties.

SEC. 60. No adjournment shall be allowed upon the application of a party, unless such party satisfy the justice, by his own affidavit, or the affidavit of some other person, that he cannot safely proceed to trial for want of some material testimony or witness, that he has used due diligence to obtain the same, and that if an adjournment be allowed, he will be able to procure such testimony or witness in time to be used on the trial.

SEC. 61. Every such adjournment shall be for such reasonable

time as will enable the party to procure such testimony or witness, not exceeding sixty days, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

SEC. 62. If a cause commenced by warrant be adjourned on the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody, but the cause shall not be discontinued by such discharge; and at the adjourned day the same proceedings shall be had as on the return day of a summons duly served.

SEC. 63. If such cause be adjourned on the application of the defendant, he shall continue, during the time of the adjournment, in the custody of the constable, unless he shall enter into a recognizance before the justice, with such security as the justice may approve, in a penalty sufficient to cover the plaintiff's demand and costs, conditioned that if judgment be given in the suit against him, and execution be issued against his person, he will render himself upon such execution before the return day thereof, or, in default thereof, that he or his security will pay the judgment so recovered.

SEC. 64. If such recognizance shall have been given on any prior adjournment, it shall not be necessary to enter into a new recognizance upon a subsequent adjournment, unless such recognizance be required by the justice or by the bail of the defendant in such prior recognizance.

SEC. 65. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover, unless he show that an execution had been issued upon the judgment in the suit in which such adjournment was had, within ten days after the time when the same could have been issued against the person of the defendant, and a return thereon that such defendant could not be found.

SEC. 66. A subpœna issued by a justice of the peace, shall be valid to compel the attendance of a witness before such justice in the same county where the cause is to be tried, or being in an adjoining county, and within thirty miles of the place of trial.

SEC. 67. A subpœna may be served either by a constable, or by any other person who would be a competent witness in the cause; and it shall be served by reading the same to the witness, or by delivering to him a copy thereof.

SEC. 68. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpœnaed to appear before him in a suit, shall have failed, without just cause, to attend as a witness in conformity to such subpœna, and the party in whose be-

half such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness.

SEC. 69. Every such attachment may be directed to any constable of the county in which the justice resides, and shall be executed in the same manner as a warrant.

SEC. 70. The fees for issuing and serving such attachment, shall be paid by the person against whom the same may have been issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay the costs of the same.

SEC. 71. Every person duly subpœnaed as a witness, who shall not appear, shall forfeit for the use of the county in which he is subpœnaed to appear, unless some reasonable excuse shall be shown, on the oath of such witness or the oath of some other person, such fine, not exceeding ten dollars, as the justice shall think reasonable to impose; and the justice shall make an entry in his docket of the conviction, and of the cause thereof.

SEC. 72. At the expiration of thirty days from the entry of such conviction, the same shall be deemed a judgment, in all respects, at the suit of such county, and execution shall be issued thereupon as upon other judgments before a justice of the peace; and the constable shall pay the fine, when collected, to the treasurer of the county.

SEC. 73. The person upon whom such fine shall be imposed, may, at any time before the expiration of thirty days, appear before the justice, and show cause against the imposition thereof; and upon the hearing of such cause, the justice may remit or mitigate such fine.

SEC. 74. Every person subpœnaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for all damages which such party may have sustained by his non-appearance.

SEC. 75. Either party in any civil suit depending before a justice, may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace, or any other person authorized to take depositions in this State, or by any judge or justice of the peace of any other State.

SEC. 76. No such deposition shall be taken, unless notice in writing of the time and place of taking the same shall have been previously served on the other party, three days before the taking thereof, with an additional day for every twentyfive miles of distance from the place of such service to the place of taking such deposition.

SEC. 77. Such notice may be served in like manner as an original summons, and the service may be on the party or his agent in the suit; and when such party resides out of the county, and has no agent in the suit therein, the service of such notice may be by filing a copy thereof with the justice before whom the suit is pending.

SEC. 78. The deposition shall be taken and certified according to the statute of this State regulating the taking of depositions, and shall be sealed up, and returned, so sealed, to the justice before whom the suit in which they were taken is pending.

SEC. 79. When such depositions are taken without the State, the official character of the officer by whom the same were taken, shall be certified under the seal of the State or county where such depositions were taken, or under the seal of some court therein.

SEC. 80. The justice shall allow every deposition taken and returned according to the provisions of this act, to be read on the trial of the cause in which it was taken, in all cases where the same testimony, if given verbally, could have been received; but no such deposition shall be read on the trial, unless it shall appear to the justice that the witness whose deposition is offered, first, is dead, or resides out of the county; or, second, is unable to, or cannot, safely attend before the justice, on account of sickness, age, or other bodily infirmity, or has gone out of the county without the consent of the party offering the deposition.

SEC. 81. When a defendant who has been duly served with process, or who has once appeared to a suit the trial of which has been adjourned, shall neglect to appear within three hours after the time of appearing specified in the process, or the time to which the cause was adjourned, the justice shall proceed in the cause in the following manner:

First, If the suit be founded upon an instrument of writing filed with the justice at the commencement of the action, and purporting to have been executed by the defendant, and if the demand of the plaintiff is liquidated by such instrument, the justice shall, whether the plaintiff appear or not, render judgment against the defendant by default, for the amount which shall appear by such instrument to be due to the plaintiff, after allowing the proper discounts for all payments endorsed thereon, with costs;

Second, If a suit be not founded on an instrument of writing, as is declared in the preceding clause of this section, and the plaintiff appear in person, or by agent, the justice shall proceed to hear his alle-

gations and proofs, and shall determine the cause as the very right thereof shall appear from the testimony; and if it shall appear from such testimony that the plaintiff is entitled to recover, judgment shall be rendered by default against the defendant for so much as the testimony shows the plaintiff to be entitled to, together with costs; and if it do not appear that the plaintiff ought to recover, judgment shall be given for the defendant as upon a verdict against the plaintiff.

SEC. 82. If the plaintiff fail to appear, except where the suit is founded on an instrument of writing, as declared in the first clause of the preceding section, the justice shall render judgment of nonsuit against the plaintiff with costs; and in all cases not otherwise specially provided for, if the plaintiff fail to appear, in person or by agent, within three hours after the time appointed for the trial of the cause, the justice shall render judgment of nonsuit against him with costs.

SEC. 83. Every justice of the peace shall have power, on the application of the party aggrieved, to set aside a judgment of nonsuit or by default, upon such terms as shall be just.

SEC. 84. Every such application shall be made within fifteen days after the rendering of the judgment, and if, in the mean time, an execution has been issued, the justice may revoke the same in the manner hereinafter provided for revoking an execution after an appeal has been allowed, and with the like effect.

SEC. 85. The justice shall, in all cases, make an entry in his docket of every such application, and of the day on which it was made, together with his orders thereon.

SEC. 86. If any such judgment of nonsuit or default be set aside, and a new trial be granted, the justice shall fix the time of such trial, and make out, under his hand, a notice to the opposite party, stating the fact that such judgment has been set aside, and specifying therein the time fixed for the trial, which notice shall be served on the opposite party, or his agent in the suit, five days before the trial, and shall be executed and returned in like manner as a summons, and the same fees shall be allowed therefor.

SEC. 87. Every suit instituted by summons or warrant, shall be determined on the return of the process duly served at the time therein specified, if any, unless the cause be adjourned.

SEC. 88. When both parties appear before the justice, in person or by agent, at the time appointed for the trial of the cause, the justice shall proceed to hear the allegations and proofs of the parties, and determine the suit as the very right of the case shall appear.

SEC. 89. On the trial of all suits upon contracts, before any justice of the peace, or in any circuit court, on an appeal, whether brought by the original claimant, or any person for his use, or by the payee or obligee of any note or bond, or his assignee, it shall be the duty of the justice or court to hear and determine such cause on its merits, and to hear parol or other legal evidence, to impeach the consideration or validity of such note or bond.

SEC. 90. If it be ascertained by the justice or court, or the verdict of a jury, if one be required, that the consideration of such note or bond has failed in whole or in part, judgment shall be given according to the finding of the justice or court, or the verdict of the jury, notwithstanding the defendant may hold a warranty or other instrument of writing on the payee or obligee of such note or bond, purporting to be an agreement to make good the consideration of the said note or bond, if the same should fail.

SEC. 91. Before the justice shall commence an investigation of the merits of the cause, by the examination of witnesses, or the hearing of any testimony, either of the parties, when the amount in controversy is over ten dollars, may demand of the justice that the cause be tried by jury.

SEC. 92. The jury shall consist of six persons, but the parties may agree upon any number of jurors less than six, to try the cause; and in that case the jury shall consist of such number, not exceeding six, as the parties may agree upon.

SEC. 93. The justice shall issue a summons directed to the constable of the township where the cause is to be tried, commanding him to summon six, (or such less number as the parties may have agreed upon,) good and lawful men of the township, qualified to serve as jurors in the circuit court of the same county, who shall be no wise of kin to either party, nor interested in the suit, to appear before such justice, at a time and place to be named therein, to make a jury for the trial of the action between the parties named in such summons.

SEC. 94. The constable shall execute such summons fairly and impartially, and shall not summon any person who he has reason to believe is biased or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the summons, and return the same to the justice.

SEC. 95. If a sufficient number of jurors cannot be obtained from

the panel returned, the constable shall immediately summon others to serve in their place.

SEC. 96. If the constable to whom the summons shall have been delivered do not return the same as thereby required, or if a full jury be not obtained in the manner declared in the preceding section, the justice shall issue a new summons.

SEC. 97. To each juror the justice shall administer an oath well and truly to try the matter in controversy between —— ——, plaintiff, and —— ——, defendant, and a true verdict to give according to the evidence, unless discharged by the justice.

SEC. 98. After the jury are sworn, they shall sit together, and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence, and they must all agree to the verdict.

SEC. 99. If a witness, on being produced, shall be objected to as incompetent, such objections shall be heard and determined by the justice.

SEC. 100. Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn that the evidence he shall give, relating to the matter in issue between —— ——, plaintiff, and —— ——, defendant, shall be the truth, the whole truth, and nothing but the truth.

SEC. 101. If there shall be no evidence given to establish any demand founded upon contract, or to establish any set-off, or if the evidence given be insufficient for that purpose, the justice may, upon the application of the party offering such demand or set-off, order the opposite party to be sworn and examined in relation thereto; and if the party thus required refuse to testify, the justice shall allow the party offering the demand or set-off, to be sworn and examined in relation to the same matter; and after the examination of either party, no further evidence shall be given in relation to such demand or set-off.

SEC. 102. Either party in any suit founded on contract, may cause the opposite party to be subpœnaed as a witness in the cause, in the same manner, and with like effect, as any other person.

SEC. 103. If any party, after being duly subpœnaed, fail to attend the trial personally, and such failure be not accounted for, the justice may allow the other party to be sworn and examined as a witness in all cases, and with like effect, as if such subpœnaed party had been personally present, and had refused to testify.

SEC. 104. If any suit or set-off be founded upon any instrument of writing, purporting to have been executed by the opposite party,

and the same shall have been filed with the justice according to the preceding provisions of this act, said instrument shall be received in evidence on the trial, unless the party (before the jury is sworn, or the trial submitted to the justice,) charged to have executed the same, shall deny the execution thereof, on oath, taken before such justice, or by an affidavit filed with the justice, taken before any court or officer authorized to administer oaths.

SEC. 105. When the jurors have agreed upon their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket.

SEC. 106. Whenever a justice shall be satisfied that a jury, sworn in any cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them, and shall issue a new summons, unless the parties consent that the justice may render judgment upon the evidence already before him, which, in such cases, he may do, or unless they consent that the new trial, upon a new hearing of the evidence, shall be by the justice.

SEC. 107. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to the same fine, to be prosecuted for and collected in the same manner with costs, and applied to the same use, as hereinafter provided in respect to a witness subpœnaed and not appearing.

SEC. 108. A justice of the peace may enter judgment by confession of the defendant, in any cause, when the amount confessed shall not exceed the amount for which a justice is authorized to render judgment in an action.

SEC. 109. No confession shall be taken, or judgment rendered thereon, unless the following requisites be complied with: first, the defendant must personally appear before the justice; second, the confession must be in writing, signed by the defendant, or by some person by him lawfully authorized, and filed with the justice.

SEC. 110. If there be mutual judgments between the parties, upon which the time for appealing has elapsed, and on which there is no existing execution, one judgment, on the application of either party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed, may have been rendered.

SEC. 111. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there shall be a certificate of the justice rendering the judgment, that there is

no appeal or existing execution thereon; and that such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a set-off.

SEC. 112. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on said judgment shall be stayed, unless such transcript be returned, with the proper justice's certificate thereon, that it has not been allowed in set-off.

SEC. 113. If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off.

SEC. 114. If a justice shall allow a transcript of a judgment rendered by another justice to be a set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off; and if he shall refuse such set-off, he shall so certify on the transcript, and return the same to the party who offered it.

SEC. 115. If, upon the appearance of the parties on the return of any process, except where the defendant shall have been arrested by warrant, the defendant shall, before the jury is sworn, or the trial is submitted to the justice, make affidavit that the justice before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, or that he is near of kin to the plaintiff, stating therein in what degree, the justice shall certify the proceedings to some other justice of the peace in the same township, who shall proceed in the case in the same manner as if the suit had been originally commenced before him.

SEC. 116. If there is no other justice of the peace in the township competent to try the cause, it shall be certified to the nearest justice in an adjoining township, who shall try and determine the same in the same manner as if the parties were resident of his township, and the suit had been originally commenced before him.

SEC. 117. Judgment of nonsuit, with costs, shall be rendered against the plaintiff in the following cases, in addition to the cases specially provided for; first, if he withdraw his action; or, second, if he be nonsuited at the trial.

SEC. 118. Judgment for the defendant, with costs, shall be rendered whenever a trial or hearing has been had, and no sum shall be found by the verdict of a jury or decision of the justice, in favor of the plaintiff.

SEC. 119. Judgment for the plaintiff, with costs, shall be rendered whenever a trial or hearing has been had, and any sum shall be found

by the verdict of a jury or decision of the justice, in favor of the plaintiff.

SEC. 120. In all cases where a plaintiff shall be nonsuited, or withdraw his action, and where judgment shall be confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody, at the time of hearing the cause, the justice shall forthwith render judgment and enter the same in his docket.

SEC. 121. In all other cases, he shall render judgment, and enter the same in his docket, within two days after the cause is submitted to him for his final decision.

SEC. 122. If any sum be found in favor of a party, either by verdict of a jury, or upon a hearing of the cause before the justice, exceeding the sum for which the justice is authorized to give judgment, such party may remit and release the excess, and take judgment for the residue.

SEC. 123. The execution upon a judgment rendered by a justice of the peace, may be stayed in the manner hereinafter provided, and for the following periods of time, to be calculated from the date of the judgment: First, if the judgment be for any sum not exceeding ten dollars, exclusive of costs, one month; second, if it be for any sum above ten dollars, and not exceeding thirty dollars, exclusive of costs, two months; third, if it be for any sum above thirty dollars, and not exceeding fifty dollars, exclusive of costs, three months; fourth, if it be for any sum above fifty dollars, and not exceeding sixty dollars, exclusive of costs, four months; fifth, if it be for any sum above sixty dollars, exclusive of costs, six months.

SEC. 124. If all the parties agree upon any other period, the stay shall be for the time so agreed upon.

SEC. 125. To entitle any person to such stay of execution, some responsible person, to be approved of by the justice, not being a party to the judgment, must, within ten days after the rendering of the judgment, enter into a recognizance, before the justice, to the adverse party, in a same sufficient to secure the payment of the judgment, conditioned to be void on such payment at the expiration of the stay.

SEC. 126. Such recognizance must be signed by the party entering into the same, and be attested by the justice before whom it may be taken, and shall have the same force and effect as a judgment rendered by a justice of the peace, and it may be in the following form:

"I, A. B., acknowledge myself indebted to C. D., in the sum of —— dollars, to be void upon this condition: Whereas, C. D. ob-

tained a judgment before H. I., a justice of the peace of —— township, in the county of ——, on the —— day of ——, 18—, against E. F.: Now, if such judgment shall be paid at the expiration of —— months from the time it was rendered, this recognizance shall be void.

A. B.

"*Attest:* H. I., *J. P.*"

SEC. 127. If the plaintiff, or his agent, will make oath before the justice rendering the judgment, that he has reason to believe that the defendant is secreting his property, or is putting it out of his hands for the purpose of defrauding his just creditors, and that he verily believes the debt will be lost, if execution be not immediately issued, in all such cases the justice shall immediately issue execution on such judgment, whether the ten days allowed in this act for entering into recognizance for the stay of execution have expired or not.

SEC. 128. If the plaintiff in any judgment rendered before a justice of the peace, and when execution has been stayed, will satisfy the justice before whom a recognizance for such stay may have been entered into, by affidavit or evidence, that such recognizance, or the security therein, is insufficient, and that unless execution be immediately issued on such judgment, he will be in danger of losing his debt, such justice shall immediately issue execution, regardless of the stay.

SEC. 129. In all cases where execution shall be stayed on any judgment rendered, by a justice of the peace, under the provisions of this act, such judgment shall be a lien on all the personal property subject to execution, belonging to the defendant at the time of the rendition of the judgment.

SEC. 130. If at the expiration of the stay on any judgment, the amount of such judgment be not paid, the execution shall be issued against both principal and security; and if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him on the execution was collected from the bail, and the time the same was received.

SEC. 131. After the return of such execution, the bail shall be entitled, upon motion, to a judgment before the justice for the amount collected from him in satisfaction of such execution, with interest thereon at the rate of ten per centum per annum, and the return of the officer shall be evidence of the amount of money paid by the bail.

SEC. 132. No such motion shall be made after the expiration of four months from the return day of any such execution.

SEC. 133. If a judgment be stayed in the manner herein before prescribed, after an execution shall have been issued thereon, the justice shall revoke such execution in the same manner, and with like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed.

SEC. 134. Every justice, on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified copy of such judgment, and the clerk of the circuit court of the same county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the circuit court for judgments and decrees, and shall note therein the time of filing such transcript.

SEC. 135. Every such judgment, from the time of filing the transcript thereof, shall be a lien on the real estate of the defendant in the county, to the same extent as a judgment of the circuit court of the same county, and shall be carried into execution in the same manner, and with like effect, as the judgments of such circuit court; but no execution shall be sued out of the circuit court thereon, until an exetion shall have been issued by a justice, and returned that the defendant has no goods or chattels whereof to levy the same.

SEC. 136. Upon every judgment rendered by a justice of the peace, execution shall be issued by such justice in manner hereinafter prescribed, at any time on demand, unless the same shall have been stayed.

SEC. 137. The execution shall be directed to the constable of the township where the justice resides, unless where it is otherwise specially provided, and shall be dated on the day it is issued, and shall be made returnable within thirty days after the date thereof.

SEC. 138. Such execution shall be against the goods and chattels of the person against whom the same is issued; and against the goods, chattels and body of such person, whenever the person in whose favor the judgment was rendered, or some other person for him, shall make and file an affidavit with the justice, that he has reason to believe that the defendant is secreting or putting his property out of his hands, for the purpose of cheating and defrauding his just creditors, or that he will be in danger of losing his debt, unless execution be issued against the body of such person.

SEC. 139. The execution against the goods, chattels, and body of the person against whom the same is issued, shall command the officer to levy the debt, damages, and costs, of the goods and chattels of such person, and for want of sufficient goods and chattels, to take the body of such person, and convey him to the common jail of the county, there to remain until the debt, damages and costs are paid, or he be otherwise discharged according to law.

SEC. 140. Such execution may be in the following form:

"COUNTY OF ——, ss.

"THE STATE OF ARKANSAS,

"*To the constable of the township of* ——, *in the county of* ——

GREETING:

"Whereas —— ——, on the —— day of ——, 18—, obtained judgment before the undersigned, a justice of the peace in and for the township of ——, in the county of ——, against —— ——, for —— dollars, for his debt, (or damages,) and —— dollars, for his damages, and also, —— dollars, for his costs, you are therefore commanded to levy the same of the goods and chattels of the said —— ——, according to law, and for want of sufficient goods and chattels you are commanded to take the said —— ——, and convey him to the common jail of the county aforesaid, and deliver him to the sheriff or keeper thereof, who is hereby required to receive and safely keep him, until the debt, damages, and costs are paid, or he be otherwise discharged according to law. You are further commanded to return this writ to the undersigned justice, within thirty days from the date. Given under my hand, this —— day of ——, 18—.

"A. B., *J. P.*"

SEC. 141. The execution against the goods and chattels of the person against whom the same is issued, shall command the officer to levy the same of the goods and chattels of such person, and may be in the form prescribed in the preceding section, omitting the clause against the body.

SEC. 142. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, an account of debt, damages and costs, and of the fees due to each person, separately, and the officer receiving such execution shall endorse thereon the time of receiving the same.

SEC. 143. In case it shall be suggested to the justice that the defendant resides out of the township where the judgment was rendered, or that he has not sufficient goods and chattels therein to satisfy

such judgment, the justice shall issue the execution to the constable of any township in the same county wherein the defendant, or his goods and chattels may be suggested to be.

SEC. 144. If any execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time, by the justice issuing the same, by an endorsement thereon to that effect, signed by him, and dated when the same is made.

SEC. 145. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on such execution.

SEC. 146. Every such endorsement shall renew the execution in full force, in all respects, for thirty days, and no longer; and an entry of such renewal shall be made in the docket of the justice.

SEC. 147. The constable, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice, by at least three advertisements put up in three public places in the township, of the time and place when and where they will be exposed to sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 148. At the time and place so appointed, if the goods and chattels be present for the inspection of bidders, the officer shall expose the same to sale at public vendue.

SEC. 149. He shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

SEC. 150. No constable, or other officer, shall, directly or indirectly, purchase any goods or chattels at any sale made by him upon execution; but every such sale shall be absolutely void.

SEC. 151. If the execution be against the goods, chattels and body, and there are not sufficient goods and chattels whereon to levy, the officer shall take the body of the person against whom the execution shall have been issued, and convey him to the common jail of the county, the sheriff or keeper whereof is hereby required to receive and safely keep him, until the debt, damages and costs be paid, or he be discharged by due course of law.

SEC. 152. If a constable shall levy an execution on any goods and chattels, and any person other than the defendant in the execution claim such property, the constable may summon six persons, competent to serve as jurors before a justice of the peace, to assemble at such time and place in the township as he shall direct, not exceeding

five days from the time he is notified of such claim, to try the right of property between the defendant in the execution and such claimant.

SEC. 153. The constable shall administer an oath to each of the jurors, well and truly to try and determine the right of property between the claimant and the defendant in the execution, to the goods and chattels in custody, and report their decision to the constable.

SEC. 154. The constable may administer the oaths to the witnesses proposed to be examined.

SEC. 155. The jury shall be the judges of the law and the fact.

SEC. 156. If the jury find the goods and chattels to be the property of the defendant in the execution, the verdict shall, as against the claimant, justify the officer in selling such goods and chattels.

SEC. 157. If the verdict is for the claimant, the plaintiff in the execution shall pay the costs of the trial; if it is against the claimant, the costs shall be paid by such claimant; and the constable and witnesses shall be entitled to the like fees as for similar services before a justice.

SEC. 158. If persons summoned as jurors upon such inquest fail to appear, or, appearing, refuse to serve, the constable shall forthwith summons others in their place, and shall have the same po wer to fine every such person that a justice of the peace has in respect to jurors summoned to attend before him.

SEC. 159. If any person so fined neglect to render the constable a reasonable excuse for his failure or refusal, within twenty days from the time of imposing such fine, the constable shall proceed to levy the same, together with the costs, of the goods and chattels of the person fined, as upon a justice's execution, and shall pay the amount as soon as the same shall be collected, to the treasurer of the county, for the use of such county.

SEC. 160. The constable of the township shall receive all money that may be tendered to him in payment of any judgment obtained before a justice of the peace of such township, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid; and the payment shall be valid against the judgment, and, upon the production to the justice of the receipt therefor, shall be credited thereon.

SEC. 161. The person entitled to the money paid, shall have the like remedies against the constable and his securities, for the recovery thereof, as if such money had been collected by the constable on execution.

SEC. 162. No payment of money upon a judgment, made to the justice, either before or after execution thereon, shall be valid against such judgment, nor credited thereon, unless paid according to the order of the person to whom the same is due.

SEC. 163. In the following cases the justice shall, upon the demand of the party injured or his agent, issue a summons against the constable to whom any execution has been delivered, or who has received any money upon any judgment of such justice, whether with or without execution. First, if the constable fail to make return of the execution according to the command thereof; second, if he make a false return; third, if he fail to have any money, by him collected on execution, before the justice, on the return day thereof, ready to be paid over to the person entitled thereto, or the receipt of such person therefor; fourth, if he fail to pay over, on demand, to the person entitled thereto or his agent, any money by him received in payment of any judgment.

SEC. 164. Such summons shall require the constable to appear before the justice, at a place and time to be specified therein, not exceeding ten days from the issuing of the same, and show cause why an execution shall not issue against him for the amount due upon the execution placed in his hands or for the amount received by him upon the judgment, according to the nature of the case.

SEC. 165. The summons shall be served at least four days before the return day thereof, and may, in other respects, be executed in like manner as an original summons.

SEC. 166. If the constable shall fail to appear, or, appearing, fail to show good cause to the contrary, the justice shall render judgment against him for the amount due on the execution, or for the amount received by him without execution, according to the nature of the case, together with interest thereon at the rate of one hundred per centum per annum, from the time such execution ought to have been returned, or from the time such money ought to have been had before the justice, ready to be paid over to the parties entitled thereto, or from the time the money was received on the judgment, without execution, or was demanded by the party entitled thereto, or his agent.

SEC. 167. Upon such judgment there shall be no stay of execution, but an appeal may be had as in other cases, and with like effect.

SEC. 168. All process issued against any constable shall be served and executed by a special deputy, who shall be appointed by the justice for that purpose, and have the same power to execute and return such process as a constable.

SEC. 169. The party injured may proceed against the constable as before directed, or may institute a suit against him on his official bond; and in such suit he shall be entitled to the like recovery as upon a summons against the constable.

SEC. 170. Any person aggrieved by any judgment rendered by a justice of the peace, except a judgment of nonsuit, may, in person or by his agent, make his appeal therefrom, to the circuit court of the same county where the judgment was rendered.

SEC. 171. No appeal shall be taken from a judgment by default, unless, within fifteen days after the rendering of such judgment, application shall have been made to the justice by the party aggrieved, to set the same aside, and such application shall have been refused.

SEC. 172. No appeal shall be allowed, unless the following requisites be complied with; first, the applicant, or some person for him, shall make and file with the justice an affidavit that the appeal is not taken for the purpose of delay, but that justice may be done him; second, the appeal must be made within thirty days after the judgment was rendered, or where the judgment was by default, within fifteen days after the refusal of the justice to set aside the default, and grant a new trial; third, the applicant, or some person for him, together with one or more securities, to be approved by the justice, must, within the time prescribed in the second clause of this section, enter into a recognizance, before the justice, to the adverse party, in a sum sufficient to secure the payment of such judgment and the costs of the appeal, conditioned that the applicant will prosecute his appeal, with due diligence, to a decision; and if, on such appeal, the judgment of the justice be affirmed, or if, on a trial anew in the circuit court, judgment be given against him, that he will pay such judgment, and if his appeal be dismissed that he will pay the judgment of the justice, together with the costs of the appeal.

SEC. 173. Such recognizance shall be signed by the parties entering into the same, and be attested by the justice, and may be in the form following:

"We, the undersigned —— —— and —— ——, acknowledge ourselves indebted to —— ——, in the sum of —— dollars, to be void upon this condition: Whereas, —— —— has appealed from the judgment of —— ——, a justice of the peace in and for the township of ——, in the county of ——, in an action between —— ——, plaintiff, and —— ——, defendant: Now, if, on such appeal, the judgment of the justice be affirmed, or if, on the trial anew in the circuit court,

judgment be given against the appellant, he shall satisfy the judgment, or if his appeal be dismissed, he shall pay the judgment of the justice, together with the costs of the appeal, this recognizance shall be void.

A. B.
C. D.

"*Attest :* G. H., *J. P.*"

SEC. 174. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same, and immediately make an entry of such allowance in his docket; and all further proceedings on the judgment shall be suspended by the allowance of the appeal; and if, in the mean time, execution shall have been issued, the justice shall give the appellant a certificate that an appeal in the cause has been allowed.

SEC. 175. On such certificate being presented to the constable holding the execution, he shall forthwith release the property that may have been taken in execution, and the body of the defendant; and if the appellant shall have been committed to jail, the jailer, upon the service of the like certificate on him, shall release the appellant from imprisonment.

SEC. 176. On or before the first day of the circuit court next after the appeal shall have been allowed, the justice shall file in the office of the clerk of such court, a transcript of all the entries made in his docket relating to the cause, together with all the process and all the papers relating to such suit, and filed with the justice.

SEC. 177. Upon the return of the justice being filed in the clerk's office, the court shall be in possession of the cause, and shall proceed to hear, try, and determine the same anew, on its merits, without regard to any error, defect, or other imperfection in the proceedings of the justice.

SEC. 178. Upon an appeal being made and allowed, the circuit court may by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned.

SEC. 179. If a justice fail to allow an appeal in a cause where the same ought to be allowed, the circuit court, on such fact satisfactorily appearing, may, by rule and attachment, compel the justice to allow the same and return his proceedings in the suit, together with the papers required to be returned by him.

SEC. 180. Whenever the court is satisfied that the return of the

justice is substantially defective, the court may, by rule and attachment, compel him to amend the same.

SEC. 181. No appeal allowed by a justice shall be dismissed because there is no recognizance, or because the recognizance given is defective, if the appellant will, before the motion to dismiss is determined, enter before the circuit court, into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all the costs that shall be incurred by reason of such defect or omission.

SEC. 182. All appeals allowed ten days before the first day of the term of the circuit court next after the appeal allowed, shall be determined at such term, unless continued for cause.

SEC. 183. If the appeal be not allowed on the same day on which the judgment is rendered, the appellant shall serve the appellee, at least ten days before the first day of the term at which the cause is to be determined, with a notice in writing, notifying him of the fact that an appeal has been taken from the judgment therein specified. The notice may be served in the same manner as an original summons, and when the appellee does not reside in the county and has no agent in the suit therein, the service may be by leaving a copy of such notice with the justice.

SEC. 184. If the appellant fail to give notice of his appeal, in a cause where such notice is required, the cause may, on the application of the appellee, be continued as a matter of course, until the succeeding term, at the cost of the appellant; but no appeal shall be dismissed for want of such notice; and if the cause be continued, no further notice shall be required.

SEC. 185. Nothing in the preceding sections shall be so construed as to prevent the appellee from going into a trial of such appeal without notice.

SEC. 186. The same cause of action, and no other, that was tried before the justice, shall be tried in the circuit court upon the appeal; and no set-off shall be pleaded, that was not pleaded before the justice, if the summons was served on the person of the defendant.

SEC. 187. In all cases of appeal from a justice of the peace, if the judgment of the justice be affirmed, or if, on trial anew in the circuit court, the judgment be against the appellant, such judgment shall be rendered against him and his securities in the recognizance for the appeal.

SEC. 188. If, on execution being issued upon such judgment, the

principal shall not pay such execution, and the officer cannot find sufficient property belonging to such principal to satisfy the same, such execution shall be enforced against the securities, and the officer shall specify in his return, by whom the money was paid, and the time thereof.

SEC. 189. After the return of an execution, satisfied, in whole or in part, out of the property of the security, such security shall be entitled to a judgment, upon motion, against the principal, for the amount so paid by him, together with interest thereon at the rate of ten per centum per annum, from the time of the payment.

SEC. 190. Such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion, of the facts therein stated.

SEC. 191. It shall be the duty of every justice of the peace, on issuing any process in any civil case against the defendant, to endorse on the back thereof, the amount of the plaintiff's demand, together with all the costs which may have accrued in said suit up to that period; and the defendant in such action may pay the amount of the same; and thereupon it shall be the duty of the constable in whose hands said process may be, to make an endorsement on the same on the back thereof, and return the same to the justice by whom it was issued; and said return shall be a bar to any further action in said suit.

[Approved: February 12, 1838.]

CHAPTER 88.

LANDLORD AND TENANT.

SECTION

1. Tenant for life, having demised, and dying, when and how far executor or administrator may recover rent.
2. Person entitled to rent dependent on life of another, what remedy for arrears thereof after death of that other.
3. Person having freehold estate in rents in right of wife, remedy for after death of wife.

SECTION

4. Remedy for rent due on lease for life.
5. Remedy of executor or administrator for rent due testator or intestate.
6. Tenant served with notice in ejectment, to give notice to landlord or his agent.
7. Tenant giving notice of intention to quit the premises, and failing to do so, to pay double rent thereafter.
8. Such double rent, how to be recovered.

SECTION
9. Persons holding over after expiration of term, and notice, to pay double rent.
10. No relief in equity against 9th Sec.
11. How landlord may recover for use and occupation not by deed.
12. In such action, a *parol* demise, and certain rent reserved, to be evidence.
13. Lands, &c. held without special agreement, action of landlord for rent.
14. Landlord to have lien on crop for rent, and how long lien to continue.
15. Half-year's rent in arrear, when landlord may bring ejectment.
16. How summons in such case may be served.
17. Summons to be instead of demand of rent and re-entry.
18. When plaintiff may recover possession in such action.
19. How defendant may cause proceedings to cease.
20. Within what time after execution on such judgment, and how, lessee may be barred from relief.
21. How mortgagee of lease shall not be affected by such recovery in ejectment.

SEC. 1. The executor or administrator of any tenant for life, who shall have demised any lands or tenements so held, and shall die on or before the day when any rent on such demise shall become payable, may recover; first, if such tenant for life die on the day the rent becomes due, the whole rent; second, if he die before the day on which the rent becomes due, such proportion of the rent as shall have accrued before his death.

SEC. 2. Every person entitled to any rent dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action, for the recovery of all arrears of such rent that may be due and unpaid at the death of such person, as he might have if such person were in full life.

SEC. 3. Every person having in right of his wife, any freehold estate in any rents, may, if such rent is due and unpaid, at the time of his wife's death, have the same remedy by action, for the recovery of such arrears, as he might have if the wife were in full life.

SEC. 4. Any person having any rent due upon any lease for life, may have the same remedy by action for the recovery thereof, as if such lease was for years.

SEC. 5. The executor or administrator of any person to whom any rent shall have been due and unpaid at the time of the death of such person, may have the same remedy, by action against the tenant, his executor or administrator for the recovery thereof that the testator or intestate might have had.

SEC. 6. Every tenant on whom a summons in ejectment to recover the tenements by him held shall be served, shall forthwith give notice thereof to the person, or the agent of the person, of whom such tenant holds.

SEC. 7. If any tenant shall give notice in writing of his intention to quit the premises held by him, at a time specified in such notice, and shall not deliver up the possession thereof at such time, such tenant, his executor or administrator, shall from thenceforward pay to the landlord, his heirs or assigns, double the rent reserved, during all the time such tenant shall so continue in possession of such premises.

SEC. 8. Such double rent may be recovered by action of debt in any court having jurisdiction thereof.

SEC. 9. If any tenant for life or years, or if any other person who may have come into the possession of any lands and tenements under or by collusion with such tenant, shall wilfully hold over the same, after the termination of such term and thirty days' previous notice in writing given, requiring the possession thereof, by the person entitled thereto, such person so holding over, shall pay to the person so kept out of possession double the yearly rent of the lands or tenements so detained, for all the time he shall keep the person entitled thereto out of possession.

SEC. 10. There shall be no relief in equity against any recovery had at law under the preceding section.

SEC. 11. A landlord may recover in an action on the case, a reasonable satisfaction for the use and occupation of any lands and tenements held by any person under an agreement not made by deed.

SEC. 12. If a parol demise or other agreement not by deed, by which a certain rent is reserved, appear in evidence on the trial of such action, the plaintiff shall not on that account, be barred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

SEC. 13. Where lands or tenements are held and occupied by any person without any special agreement for rent, the owner of such lands or tenements, his executor and administrator, may sue for and recover a fair and reasonable compensation for such use and occupation, by an action on the case, in any court having jurisdiction thereof.

SEC. 14. Every landlord shall have a lien upon the crop grown upon the demised premises in any year, for rent that shall accrue for such year, and such lien shall continue for six months after such rent shall become payable, and no longer.

SEC. 15. Whenever a half year's rent or more is in arrear from a tenant, the landlord, if he has a subsisting right by law to re-enter for the non-payment of said rent, may bring an action of ejectment to recover the possession of the demised premises.

SEC. 16. If a summons in such action cannot be served in the ordinary mode provided by law, it may be served by affixing a copy thereof on a conspicuous part of the demised premises, where it may be conveniently read.

SEC. 17. The service of the summons in such action of ejectment shall be deemed and stand instead of a demand of the rent in arrear, and of a re-entry on the demised premises.

SEC. 18. If on the trial of such action it is proved, or upon judgment by default it appears to the court by affidavit, that the plaintiff had a right to commence such action according to the provisions of this act, he shall have judgment to recover the possession of the demised premises and costs of suit.

SEC. 19. If the defendant, before judgment is given in such action, either tenders to the landlord or brings into court where the suit is pending, all the rent then in arrear, and all costs, all further proceedings in the action shall cease.

SEC. 20. If the rent and costs remain unpaid for six months after execution upon such judgment in ejectment is executed, and no bill for relief in equity is filed within that time, the lessee and his assigns, and all other persons deriving title under the lease from such lessee, shall be barred from all relief in law or equity, except for error in the record or proceedings, and the landlord shall from thenceforth hold the demised premises discharged from the lease.

SEC. 21. A mortgagee of such lease, not in possession of such demised premises, who within six months after execution of any judgment in ejectment is executed, shall pay all rent in arrear, and all costs and the charges incurred by the landlord, and shall perform all the agreements which ought to be performed by the first lessee, shall not be affected by the recovery in ejectment.

[Approved: November 28, 1837.]

CHAPTER 89.

LAWS.

SECTION
1. How laws which pass after the veto of the governor shall be authenticated.
SECTION
2. How laws not returned within three days shall be authenticated.

SEC. 1. When a bill that has passed both houses of the General Assembly, shall be returned by the governor without his signature and with objections thereto, and upon reconsideration, shall pass both houses by the constitutional majority, it shall be authenticated, as having become a law, by a certificate endorsed thereon or attached thereto, in the following form :— "This bill having been returned by the governor with his objections thereto, and after reconsideration, having passed both houses by the constitutional majority, it has become a law, this —— day of ——," which being signed by the president of the senate and speaker of the house of representatives, shall be deemed a sufficient authentication thereof; and the bill shall again be presented to the governor, to be by him deposited with the laws in the office of the secretary of state.

SEC. 2. Every bill which shall have passed both houses of the General Assembly, and shall not be returned by the governor within three days, having thereby become a law, shall be authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form :—"This bill having remained with the governor three days, Sundays excepted, and the General Assembly being in session, it has become a law this —— day of ——.

R. A. W. *Secretary of State.*"

[Approved: December 13, 1837.]

CHAPTER 90.

LEGISLATIVE PROCEEDINGS.

SECTION

1. Joint meetings, how to be held.
2. Who shall preside, rules, and power of punishing persons not members.
3. Members, how punished.
4. Persons guilty of disorder in either house, committee of the whole, or joint meeting, to be taken and detained in custody.
5. Person committing such offence before a committee, how punished. If committed before joint committee of both houses, how process to issue and how punished.

SECTION

6. General provision for taking and reading depositons.
7. Presiding officers to issue commissions, and proceedings thereon in taking and returning depositions.
8. Power of each house or both as to issuing writs and process.
9. Subpœnas for witnesses to be issued at whose request.
10. Process, how to issue, be attested, and served.
11. Fees of witnesses.

SECTION
12. Fees of officers and witnesses, and all costs, how to be paid.
13. Contingent expenses of each house, how to be controlled and allowed.
14. Joint contingent expenses, how controlled, adjusted and allowed.
SECTION
15. Form of certificates for, and how paid.
16. Elections, majority of votes necessary to choice in, and certificate of, how granted.
17. What officers may administer oaths.

SEC. 1. When by the constitution or laws of this State, a joint meeting of the senate and house of representatives is required, they shall assemble with their clerks, on the day and at the hour previously agreed on for that purpose, in the hall of the house of representatives.

SEC. 2. When assembled, the president of the senate and speaker of the house shall preside in conjunction, and such meeting shall be governed by such standing rules as shall have been adopted for that purpose by the concurrence of both houses. They shall have power to punish any person, other than a member, for disorderly or contemptuous behavior in their presence, by fine and imprisonment, in the same manner and to the same extent, as either house may do, for like conduct before it, by the constitution and laws of this State.

SEC. 3. Any member of either house who shall be guilty of disorderly behavior in the presence of such meeting, may be punished by the house of which he is a member, in the same manner as if the offence had been committed in the presence of such house.

SEC. 4. If any person, whether a member or not, shall be guilty of any disorder in the presence of either house, or a committee of the whole, or in joint meeting of both houses, while in session, the presiding officer of such house or joint meeting, or chairman of the committee of the whole, may order such person into immediate custody, and the sergeant at arms shall immediately take such person into custody, and detain him until the further order of the house, joint meeting, or committee of the whole, before which the offence was committed.

SEC. 5. If any person whether a member or not, shall disturb the proceedings of any committee of either house, or be guilty of disorderly conduct in their presence, the house appointing such committee, may punish such person in the same manner as if the offence had been committed in the presence of such house; and if such disorder or offence be committed before a joint committee of both houses, the president of the senate shall issue process, and both houses shall in joint meeting proceed therein.

SEC. 6. In cases not otherwise provided for by law, depositions

may be taken and read in either house, or before a committee thereof, or before both houses in joint meeting, in all cases where the taking and reading depositions would be allowed in any cause pending before a court of law.

SEC. 7. When necessary, the presiding officer of the house in which they may be required, or of a joint meeting, may issue commissions to take such depositions ; and the proceedings in taking and returning depositions shall be the same as may be prescribed by law for taking depositions to be read in a court of law.

SEC. 8. Each house or both houses in joint meeting may cause to be issued the necessary writs and process to summon and compel any person charged with any offence, of which they may have jurisdiction, to appear before them or any committee thereof, and carry into execution their orders and sentences, and to summon and compel the attendance of witnesses in as full a manner as any court of law, and with like effect.

SEC. 9. Subpœnas for witnesses shall be issued at the request of any member of either house, or the party accused, or any member of any committee.

SEC. 10. All process awarded by the house of representatives, and subpœnas and other process for witnesses, where attendance may be required therein, or before any committee thereof, shall be under the hand of the speaker, and attested by the chief clerk, and shall be executed by the sergeant at arms or a special messenger : and all such process awarded by the senate or a joint meeting of both houses, shall be under the hand of the president, and attested by the secretary, and executed by their sergeant at arms, or a special messenger.

SEC. 11. Every witness attending either house, or a committee thereof, or a joint meeting of both houses, being summoned, shall be allowed the same fees, as for the time being shall be allowed by law to witnesses for their attendance in any court, to be paid as other costs.

SEC. 12. The fees of all officers and witnesses before either house, or a joint meeting, and all other costs and expenses arising therein, shall be paid out of the contingent fund of the house in which the proceedings may be had, or if had in a joint meeting of both houses, then out of the contingent fund of the General Assembly; unless the party charged be adjudged to pay the costs and expenses, in which case he shall pay them, and payment may be enforced by attachment.

SEC. 13. Each house shall control its own contingent expenses ; and when any account properly chargeable to the house of represen-

tatives, shall be adjusted and allowed according to the rules of that house, a certificate thereof shall be granted, signed by the speaker, and attested by the chief clerk; and when any account or demand for contingent expenses of the senate, shall be allowed according to the rules of that house, a certificate thereof shall be granted, signed by the president, and attested by the secretary.

SEC. 14. All joint and contingent expenses shall be controlled by the concurrent vote of both houses, and shall be ascertained, and adjusted according to their joint rules, and a certificate thereof shall be signed by the president, and countersigned by the secretary of the senate.

SEC. 15. Every certificate issued in accordance with the provisions of the two preceding sections, shall specify the amount due, on what account, and the fund out of which it is to be paid; and the auditor of public accounts, on the delivery of any such certificate to him, shall draw his warrant therefor accordingly, as in case of other demands against the State.

SEC. 16. In all elections made by either house, or by a joint vote of both houses, the votes of a majority of all the members present shall be necessary to a choice; and when such election shall be by joint vote, the president of the senate and speaker of the house of representatives shall grant the person so elected a certificate thereof, which, in all cases where a commission is required, shall be sufficient to authorize the granting of such commission.

SEC. 17. The president of the senate and speaker of the house of representatives shall have power to administer all oaths to the members and officers of their respective houses; and the president of the senate, speaker of the house of representatives, or chairman of the committee of the whole, or the chairman of any standing or select committee may administer oaths to witnesses in any case under their examination.

[Approved: February 20, 1838.]

CHAPTER 91.

LIMITATIONS.

SECTION
1. Of actions for recovery of lands and tenements.
2. What entry upon lands, &c. deemed valid.
3. Right not impaired by descent cast.
4. Persons under what disabilities excepted.
5. Person dying during disability, within what time heirs to commence action.
6. Of actions of debt on contracts, &c. not under seal, except upon judgments and decrees of courts of record;
Actions upon judgments not of courts of record;
Actions for arrearages of rent, not by writing under seal;
Actions of account, assumpsit or case, on contract or liability;
Actions of trespass on lands or for libels;
Actions for taking or injuring goods or chattels;
7. Special actions on the case, for *crim. con.*, assault and battery and false imprisonment, verbal slander, and words spoken whereby special damages are sustained.
8. Against sheriff, &c. for escape on civil process.
9. Other actions against sheriffs, &c. for misfeasance, malfeasance or nonfeasance.
10. On penal statutes.
11. All other actions.
12. In actions for balance of account, when action deemed to have accrued.
13. What disabilities saved, and in what actions.
14. Verbal promise or acknowledgment, not to take case out of statute.
15. Acknowledgment or promise of one joint contractor or executor not to affect the other.

SECTION
16. But judgment may be taken against the one acknowledging or promising.
17. Judgment on plea of nonjoinder where party not joined could not by this statute be sued.
18. This act not to apply to actions on bills, &c. of bank or corporation.
19. Person entitled to sue, dying before expiration of time, what time allowed representatives to sue.
20. Effect of absence of defendant from the State.
21. When plaintiff may commence a new action, and in what time.
22. Defendant dying, when plaintiff may commence new action.
23. When action, abated by death of plaintiff, or his administrators or executors, may be commenced anew.
24. Commencement of suit stayed by injunction, limitation not to run.
25. Disability to prevent statute running, must have existed when right of action accrued.
26. Defendant improperly preventing commencement of action, statute not to run.
27. Two or more disabilities existing, statute not to run till both removed.
28. This act not to extend to any other action specially limited by another statute.
29. Presumption of payment to apply to judgments heretofore rendered, in the same manner as to sealed instruments.
30. Presumption of payment of judgment or decree hereafter rendered, and how repelled.
31. Presumption of payment of instrument for payment of money or delivery of property, and how repelled.
32. Endorsement of payment, by party to

SECTION
whom made, not sufficient proof of payment to take case out of statute.
33. Provisions to apply to set-offs.
34. Action on promise after full age to pay debt contracted during infancy, must be in writing.
35. Of actions against purchasers, their heirs or assigns, at tax sales and judicial sales.

SEC. 1. No action for the recovery of any lands or tenements, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was siezed or possessed of the premises in question within ten years before the commencement of such suit.

SEC. 2. No entry upon lands or tenements shall be deemed sufficient or valid as a claim, unless an action be commenced thereon within one year after such entry, and within ten years from the time when the right to make such entry descended or accrued.

SEC. 3. The right of any person to the possession of any lands or tenements, shall not be impaired or affected by a descent cast in consequence of the death of any person in possession of such estate.

SEC. 4. If any person entitled to commence any action in the preceding sections specified, or to make an entry, be, at the time such title shall first descend or accrue; first, within the age of twentyone years; second, insane; third, beyond the limits of the State; or, fourth, a married woman; the time during which such disabilities shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such suit, or the making such entry; but such person may bring such action, or make such entry, after the time so limited, and within five years after such disability is removed, but not after that period.

SEC. 5. If any person entitled to commence any such action, or make such entry, die during the continuance of such disability specified in the preceding section, and no termination or judgment be had of the title, right or action, to him accrued, his heirs may commence such action, and make such entry, after the time in this act limited for that purpose, and within five years after his death, and not after that period.

SEC. 6. The following actions shall be commenced within three years after the passage of this act, or, when the cause of action shall not have accrued at the taking effect of this act, within three years after the cause of action shall accrue: First, all actions of debt founded upon any contract, obligation, or liability, (not under seal,) excepting such as are brought upon the judgment or decree of some court of record of the United States, of this, or some other State; second, all

actions upon judgments rendered in any court not being a court of record; third, all actions for arrearages of rent (not reserved by some instrument in writing, under seal;) fourth, all actions of account, assumpsit, or on the case, founded on any contract or liability, expressed or implied; fifth, all actions for trespass on lands, or for libels; sixth, all actions for taking or injuring any goods or chattels.

SEC. 7. The following actions shall be commenced within one year after the cause of action shall accrue, and not after: First, all special actions on the case, for criminal conversation, assault and battery, and false imprisonment; second, all actions for words spoken, slandering the character of another; third, all words spoken, whereby special damages are sustained.

SEC. 8. All actions against sheriffs or other officers, for the escape of any person imprisoned on civil process, shall be commenced within one year from the time of such escape, and not after.

SEC. 9. All actions against sheriffs and coroners, upon any liability incurred by them, by the doing any act, in their official capacity, or by the omission of any official duty, except for escapes, shall be brought within two years after the cause of action shall have accrued, and not thereafter.

SEC. 10. All actions upon penal statutes, where the penalty, or any part thereof, goes to the State, or any county, or person suing for the same, shall be commenced within two years after the offence shall have been committed, or the cause of action shall have accrued.

SEC. 11. All actions not included in the foregoing provisions, shall be commenced within five years after the cause of action shall have accrued.

SEC. 12. In all actions of debt, account, or assumpsit, brought to recover any balance due upon a mutual open account current, the cause of action shall be deemed to have accrued from the time of the last item proved in such account.

SEC. 13. If any person entitled to bring any action in the preceding seven sections mentioned, except in actions against sheriffs for escapes, and actions of slander, shall, at the time the cause of action accrued, be either within the age of twentyone years, or insane, or beyond the limits of this State, or a married woman, such person shall be at liberty to bring such action within the time specified in this act, after such disability is removed.

SEC. 14. No verbal promise or acknowledgment shall be deemed sufficient evidence in any action founded on a simple contract, where-

by to take any case out of the operation of this act, or to deprive the party of the benefits thereof.

SEC. 15. When there shall be two or more joint contractors or executors, no such joint contractor or executor shall lose the benefit of this act by reason of any written acknowledgment or promise made and signed by any of the other joint contractors or executors. Nothing in this section contained shall be so construed as to alter, take away, or lessen the effect of any payment of any principal or interest made by any person whatever, on any such joint contract.

SEC. 16. In actions against two or more such joint contractors or executors, although it shall appear at the trial that the plaintiff is barred by this act as to one or more of the joint contractors or executors, yet he shall be entitled to recover against other of such joint defendants by virtue of a new acknowledgment or promise, and judgment may be given, and costs allowed to the plaintiff, as to the defendant against whom he shall recover, and to the other defendant against the plaintiff.

SEC. 17. If any defendant in any action founded on any simple contract, shall plead any matter in abatement, to the effect that any other person ought to be jointly sued, and issue be joined on such plea, and it shall appear at the trial that the action could not, by reason of this act, be maintained against the other person named in such plea, the issue joined on such plea shall be found against the party pleading the same.

SEC. 18. None of the provisions of this act shall apply to suits brought to enforce payment on bills, notes, or evidences of debt issued by any bank or moneyed corporation.

SEC. 19. If any person entitled to bring any action in the preceding provisions of this act specified, die before the expiration of the time herein limited for the commencement of such suit, and such cause of action shall survive to his representatives, his executors or administrators may, after the expiration of such time, and within one year after such death, commence such suit, but not after that period.

SEC. 20. If at any time when any cause of action specified in this act accrues against any person, he be out of the State, such action may be commenced within the times herein respectively limited, after the return of such person into the State; and if, after such cause of action shall have accrued, such person depart from, and reside out of, the State, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

SEC. 21. If any action shall be commenced within the times respectively prescribed in this act, and the plaintiff therein suffer a nonsuit, or, after a verdict for him, the judgment be arrested, or after judgment for him, the same be reversed on appeal or writ of error, such plaintiff may commence a new action, from time to time, within one year after such nonsuit suffered, or judgment arrested or reversed; and if the cause of action survive or descend to his heirs, or survive to his executors or administrators, they may, in like manner, commence a new action within the time herein allowed to such plaintiff.

SEC. 22. If any action shall have been commenced within the times respectively prescribed in the provisions of this act, and the defendant in such suit die before judgment, and if the right of action be such as survives against the representatives of the defendant, the plaintiff may commence a new action against the heirs, executors, or administrators, of such defendant, as the case may require, within one year after such death; or, if no executor or administrator be appointed within the time, then within one year after letters testamentary or of administration shall have been granted.

SEC. 23. When an action commenced within the time prescribed by law shall abate by reason of the death of the plaintiff, if the right of action survive to his representatives, his executor or administrator may, within one year after such death, commence a new action; and if any action so commenced by an executor or administrator abate by the death of the plaintiff, a new action may be commenced by the administrator of the same estate, at any time within one year after such abatement.

SEC. 24. Whenever the commencement of any suit shall be stayed by an injunction of any court of equity, the time during which such injunction shall be in force shall not be deemed any portion of the time in this act limited for the commencement of such suit.

SEC. 25. No person shall avail himself of any disability in this act mentioned, unless such disability existed at the time the right of action accrued.

SEC. 26. If any person, by leaving the county, absconding, or concealing himself, or any other improper act of his own, prevent the commencement of any action in this act specified, such action may be commenced within the times respectively limited, after the commencement of such action shall have ceased to be so prevented.

SEC. 27. When two or more disabilities are existing at the same time the right of action or entry accrued, the limitation herein prescribed shall not attach until all such disabilities are removed.

SEC. 28. The provisions of this act shall not extend to any action which is, or shall be, otherwise limited by any statute; but such action shall be brought within the time limited by such statute.

SEC. 29. The presumption of payment shall apply to all judgments of any of the courts of record in this State rendered prior to the passage of this act, in the same manner as such presumption applies to sealed instruments.

SEC. 30. Every judgment or decree which may hereafter be rendered in any court of this State, or elsewhere, shall be presumed to be paid and satisfied after the expiration of ten years from the time of rendering the same; but in any suit at law, or in equity, in which the party against whom such judgment or decree may have been rendered, his heirs, or personal representatives, shall be a party, such presumption shall be repelled by proof of payment, or a written acknowledgment of indebtedness, made within ten years, of some part of the amount recovered by such judgment or decree. In all other cases, such presumption shall be conclusive.

SEC. 31. After the expiration of ten years from the time the right of action shall accrue upon any instrument for the payment of money or the delivery of property, such right shall be presumed to have been extinguished by payment; but such presumption may be repelled by proof of the payment of some part thereof, or by proof of a written acknowledgment of such right of action within that period.

SEC. 32. No endorsement of any payment written upon any bond, or any other sealed instrument, by or on behalf of the party to whom such payment shall be made, shall be deemed a sufficient proof of such payment, so as to take the case out of the operation of this act.

SEC. 33. The provisions of this act shall be deemed and taken to apply to the case of any debt or simple contract alleged by way of set-off, on the part of any defendant, either by plea, notice, or otherwise.

SEC. 34. No action shall be maintained whereby to charge any person upon any promise made after full age, to pay any debt contracted during infancy, unless such promise or satisfaction shall be made by some writing signed by the party to be charged therewith.

[Approved: March 5, 1838.]

SEC. 35. All actions against the purchaser, his heirs or assigns, for the recovery of lands sold by any collector of the revenue for the non-payment of taxes, and for lands sold at judicial sales, shall be brought within five years after the date of such sale, and not thereafter; sa-

ving to minors, persons of unsound mind, and persons beyond seas, the period of three years after such disability shall have been removed.

[Approved and in force: March 3, 1838.]

CHAPTER 92.

MANDAMUS.

SECTION

1. Supreme court to have power to issue.
2. Return, if not made to first writ of, how enforced.
3. Party may demur, plead to or traverse return, and proceedings thereon.
4. Issue joined upon return, how to be tried.
5. What recovery to be had, when verdict or judgment is for person suing out the writ.
6. What judgment when against him.
7. Recovery of damages against party for making return, to be a bar to any action for damages therefor.
8. Court to give time for making return, pleading, &c.
9. Circuit courts, in what cases to issue writs of, and proceedings thereon.
10. Appeals and writs of error granted to decisions of circuit court on mandamus.
11. And to operate as a stay until determination above.

SEC. 1. The supreme court shall have power to issue writs of mandamus.

SEC. 2. When any writ of mandamus shall be issued, directed and delivered to any officer, tribunal, person or body corporate, who are required by law to make return to such writ, such officer, tribunal, person, or body corporate shall make return to the first writ of mandamus, or in default thereof, shall be proceeded against by attachment.

SEC. 3. When any writ of mandamus shall be issued, and return shall be made thereto, the person prosecuting such writ may demur, plead to, or traverse all the material facts contained in such return, to which the officer, tribunal, person, or body corporate making such return shall reply, take issue, or demur, and such further proceedings shall be had therein, and in such manner for the determination thereof, as might have been had, if the person suing out such writ had brought his action on the case for a false return.

SEC. 4. If an issue shall be joined upon such proceedings, the same shall be tried by a jury, but if neither party should require a jury, then by the court.

SEC. 5. In case a verdict shall be found for the person suing out such writ, or if judgment be given for him upon demurrer, or by default, he shall recover damages and costs in like manner as he might have done in such action on the case, and a peremptory mandamus shall be granted to him without delay.

SEC. 6. If judgment be given against the person suing out such writ, judgment shall be rendered against him for costs.

SEC. 7. A recovery of damages by virtue of this act, against any party who shall have made a return to a writ of mandamus, shall be a bar to any action against the same party for making such return.

SEC. 8. The court shall have power to give time for making a return and pleading thereto, and for filing any subsequent pleading, as in other actions.

SEC. 9. The several circuit courts of this State shall have power to issue writs of mandamus to the courts of probate, county courts, justices of the peace, and all other inferior officers in their respective circuits, and the same proceedings may be had as are provided in this act in similar cases in the supreme court.

SEC. 10. Appeals and writs of error may be taken to the supreme court from the decisions of the circuit court on writs of mandamus, as in other cases.

SEC. 11. The allowance of an appeal, or writ of error, after notice thereof, shall operate as a stay to all proceedings in the circuit court, until the determination thereof.

[Approved: February 19, 1838.]

CHAPTER 93.

MARKS AND BRANDS.

SECTION
1. Every person to have an ear mark and brand, and the same to be recorded.
2. Cattle, &c., when to be marked or branded.
3. Disputes concerning, to be decided by reference to the record book.
4. Duty of clerks to keep such record.
5. Marking or branding cattle, &c., by a purchaser, to be done in the presence of one or more of his neighbors, who are authorized to certify thereto.
6. Minors may have mark or brand, and parents or guardians responsible for such minors.
7. Persons who have heretofore recorded their mark or brand, not hereby required to do so again.

SEC. 1. Every person in this State who hath cattle, hogs, sheep or goats, shall have an ear mark and brand, and but one of each, and differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the clerk of the county court where such cattle, hogs, sheep or goats shall be.

SEC. 2. Cattle shall be marked with the ear mark or branded with the brand of the owner on or before twelve months old; hogs, sheep and goats shall be marked with the ear mark of the owner on or before they are six months old.

SEC. 3. If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the clerk of the county court.

SEC. 4. It shall be the duty of the clerks of the county courts in the respective counties of this State, to keep a well bound book in which they shall record the marks and brands of each individual who may apply to them for that purpose, and which shall be subject to the examination of every citizen of the county at all reasonable office hours, free of charge for such examination.

SEC. 5. A person purchasing or acquiring cattle or other stock, where he brands or marks the same in his brand or mark after the acquisition of the same, shall do it in the presence of one or more of his neighbors, who are authorized to certify to the fact of branding or marking being done, where done, and in what brand or mark the cattle or other stock were previously, and in what brand or mark they were re-branded or re-marked.

SEC. 6. Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark which shall be recorded: the father or guardian shall be responsible for the proper use of such mark and brand of any such minor.

SEC. 7. Persons who have heretofore recorded their mark or brand, shall not be required to have the same recorded again under this act in the same county.

[Approved: December 6, 1837.]

CHAPTER 94.

MARRIAGES.

SECTION
1. Marriage to be considered a civil contract, and consent of parties necessary thereto.
2. At what age to be contracted.
3. Within what degrees to be void.
4. Of white persons with negroes and mulattoes to be void.
5. Parties incapable, from what causes, marriage to be annulled, and how.
6. No subsequent marriage to be contracted, in life time of former husband or wife, except in what cases.
7. What marriages contracted without this State, to be valid.
8. When death presumed from abandonment, and effect of marriage thereafter.
9. Persons contracting or solemnizing marriage contrary to third and fourth sections, how punished.
10. Who may solemnize marriages.
11. Minister or priest, how to be authorized to do so.
12. *Ceremony* of, how performed.
13. How in religious societies which object to formal ceremonies.
14. Certificate of in such case how to be transmitted to clerk, and by whom, and to be recorded.
15. Names, ages and residence of parties to be ascertained before solemnization.
16. Certificate of marriage by person solemnizing, how to be made out.
17. When to be returned to clerk and recorder.
18. Penalty for failure to file certificate.
19. In what cases consent of parent or guardian to be had, and how.
20. When verbal, such consent to be stated in the certificate; when in writing, to be attached thereto, filed and recorded.
21. Penalty for solemnizing without such consent when necessary.
22. Record of licenses, credentials and certificates to be kept by clerk.
23. Penalty for clerk failing to do so.
24. Such record book to be evidence.
25. Penalty of officer for making false return, pretended marriage or false record.
26. Penalty for solemnizing marriage contrary to second section.

SEC. 1. Marriage is considered in law a civil contract, to which the consent of the parties capable in law of contracting is necessary.

SEC. 2. Every male who shall have arrived at the full age of seventeen years, and every female who shall have arrived at the full age of fourteen years, shall be capable in law of contracting marriage; if under those ages, their marriages are void.

SEC. 3. All marriages between parents and children, including grand parents and grand children of every degree, between brothers and sisters of the half as well as the whole blood, between uncles and nieces, and between aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate children and relations.

SEC. 4. All marriages of white persons with negroes or mulattoes are declared to be illegal and void.

SEC. 5. When either of the parties to a marriage shall be incapable, from want of age or understanding, of consenting to any marriage, or shall be incapable from physical causes of entering into the marriage state, or where the consent of either party shall have been obtained by force or fraud, the marriage shall be void, from the time its nullity shall be declared by a court of competent jurisdiction.

SEC. 6. No subsequent or second marriage shall be contracted by any person during the life time of any former husband or wife of such person, unless the marriage with the former husband or wife has been dissolved, for some one of the causes set forth in the law concerning divorces, by a court of competent authority.

SEC. 7. All marriages contracted without this State, which would be valid by the laws of the State or country in which the same were consummated, and the parties then actually resided, shall be valid in all the courts in this State.

SEC. 8. In all cases where any husband shall abandon his wife or wife her husband, and reside beyond the limits of this State for the term of five successive years, without being known to such person to be living during that time, their death shall be presumed, and any subsequent marriage entered into after the end of said five years shall be as valid as if such husband or wife were dead.

SEC. 9. Whoever shall contract marriage in fact, contrary to the prohibitions of the third and fourth sections of this act, and whoever shall knowingly solemnize the same, shall be deemed guilty of a high misdemeanor, and shall upon conviction be fined or imprisoned, or both, at the discretion of the jury who shall pass on the case, or if the conviction shall be by confession, or on demurrer, then at the discretion of the court.

SEC. 10. For the purpose of being registered, and perpetuating the evidence thereof, marriages shall be solemnized only by the following persons. First, by the governor of the State for the time being. Second, by any of the judges of the courts of record within this State. Third, by any justice of the peace of the county where the marriage is solemnized. Fourth, by any regularly ordained minister or priest of any christian sect or denomination.

SEC. 11. No minister of the gospel or priest of any christian denomination, shall be authorized by law to solemnize the rites of matrimony in the State, until such minister or priest shall have caused to

be recorded in the office of the clerk and recorder of the county, in which he proposes to solemnize the rite of matrimony, his license or the credentials of his clerical character, and have obtained from such clerk a certificate under his hand and official seal, that the same is duly recorded in his office.

SEC. 12. When marriages are solemnized by a minister of the gospel or priest, the ceremony shall be according to the forms and customs of the church or society to which he belongs; when solemnized by a civil officer, such form shall be observed as the officer shall deem most appropriate.

SEC. 13. It shall be lawful for religious societies who reject formal ceremonies, to join together in marriage such persons as are of such society, according to the forms, customs or rites of the society to which they belong.

SEC. 14. The clerk, or keeper of the minutes, proceedings or other book of the society where such marriages shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society shall make out and transmit to the clerk and recorder of the county in which such marriage is had, a certificate thereof, and the same shall be recorded in like manner as is provided in this act for registering marriage certificates.

SEC. 15. It shall be the duty of every civil magistrate, minister or priest, previous to solemnizing any marriage, to ascertain the given or christian name and family name of the persons applying to be married, also their respective ages and residence, to enable the person solemnizing such marriage to make the certificate required in the section next following.

SEC. 16. When any person authorized by this act shall solemnize any marriage, he shall make out a certificate of the names, ages and residence, and that he has performed the marriage ceremony between the parties. If a minister or priest, he shall state that it was performed according to the rites and customs of his church or society.

SEC. 17. The civil officer, minister, priest or other person whose duty it is made to certify a marriage, shall within sixty days after any marriage solemnized by him, return a certificate thereof to the clerk and recorder of the proper county.

SEC. 18. Any civil officer, minister, priest or person required to certify any marriage, failing to file with the proper clerk, the certificate of marriage required by this act within the time prescribed by law,

shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than ten nor more than five hundred dollars.

SEC. 19. Persons authorized by this act to solemnize marriages shall not perform any marriage ceremony, of any male over the age of seventeen years and under the age of twentyone years, nor of any female over the age of fourteen years and under the age of eighteen years, without the consent in person or in writing of the parent or guardian of such male or female minor, if they have either parent or guardian living in this State.

SEC. 20. When the consent of parents or guardians shall be verbal, it shall be so stated in the marriage certificate; if it be in writing, it shall be attached to and filed with the certificate, and recorded.

SEC. 21. If any minister, civil officer or priest, shall marry any minor without the consent of parent or guardian, as prescribed by this act, such person, so offending, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum, at the discretion of the jury who shall pass on the case, or if the conviction be by confession or demurrer, then at the discretion of the court, not less than twentyfive dollars, nor more than five hundred dollars.

SEC. 22. It shall be the duty of the clerk and recorder in each county, seasonably to record in a well bound book to be by him kept for that purpose, all licenses or credentials of clerical character, of such persons as may deposit the same with him for record; and to record all marriage certificates therein.

SEC. 23. Any clerk failing to comply with the provisions of the last preceding section of this act, shall on motion of the party aggrieved, (giving the said clerk ten days' notice in writing of such motion,) be fined in any sum not exceeding one hundred dollars.

SEC. 24. The book of marriages and clerical credentials to be kept by the respective clerks and recorders, and copies thereof duly certified by the clerk and recorder, shall be evidence in all the courts in this State.

SEC. 25. If any person authorized to solemnize any marriage in this State, shall wilfully make a false return of any marriage or pretended marriage to the clerk and recorder, or if the clerk and recorder shall wilfully make a false record of any return of a marriage, to him made, such offender shall be deemed guilty of a high misdemeanor, and on conviction shall be fined in any sum, not less than one hundred dollars.

SEC. 26. Any civil officer, minister or priest celebrating any

marriage contrary to the prohibition as to age contained in the second section of this act, whether with or without the consent of parents or guardians, shall be deemed guilty of a high misdemeanor, and upon conviction shall be fined in any sum which a jury shall assess, or if the case be decided without the intervention of a jury, then at the discretion of the court; but in no case shall the finding of the jury or judgment of the court be less than one hundred dollars.

[Approved: February 20, 1838.]

CHAPTER 95.

MARRIAGE CONTRACTS.

SECTION
1. Must be in writing, acknowledged or proven.
2. How acknowledged.
3. When for real estate, to be recorded in county where such estate is situate.
4. Depositing for record to be deemed notice, as far as relates to real estate in the county where so deposited.
5. Not to be valid or affect property, except as between the parties, and those having actual notice, until deposited for record.
6. So proved or acknowledged, certified or recorded, to be received in evidence.
7. When lost, a copy may be received in evidence.
8. Certificate of acknowledgment or probate, record or transcript, not to be conclusive, but may be rebutted.

SEC. 1. All marriage contracts whereby any estate real or personal is intended to be secured or conveyed to any person or whereby such estate may be affected in law or equity, shall be in writing, sealed and acknowledged by each of the contracting parties, or proved by one or more subscribing witnesses.

SEC. 2. Marriage contracts shall be acknowledged or proven before a court of record, or before some judge or clerk of a court of record of the State in which the contract is made and executed, which acknowledgment or proof shall be taken and certified in the same manner as deeds of conveyance for lands are, or shall be, required by law to be acknowledged or proven.

SEC. 3. Every marriage contract whereby any real estate is conveyed or secured, shall be recorded with the certificate of proof or acknowledgment in the office of the clerk and recorder of every county in which any such estate thereby intended to be affected or conveyed shall be situate.

SEC. 4. When a marriage contract is deposited with the recorder of any county for record, it shall be deemed full notice to all persons of the contents thereof, as far as relates to real estate affected thereby in the county where it is deposited.

SEC. 5. No marriage contract shall be valid or affect property except between the parties thereto and such as have actual notice thereof, until it shall be deposited for record with the clerk and recorder of the county where the real estate is situate.

SEC. 6. Marriage contracts duly proved or acknowledged, certified or recorded, shall be received as evidence in any court of record of this State, without further proof of their execution.

SEC. 7. When it shall appear to a court that any marriage contract duly acknowledged or proved and recorded, is lost, or is not in the power of the party wishing to use it, a copy thereof duly certified under the hand and seal of the clerk and recorder may be received in evidence.

SEC. 8. Neither the certificate of acknowledgment or probate of any such marriage contract, nor the record or transcript thereof, shall be conclusive, but may be rebutted.

[Approved: November 23, 1837.]

CHAPTER 96.

MECHANICS.

SECTION

1. Lien of, definition of.
2. Proceedings required, in order to acquire such lien.
3. Account of mechanic, &c., to be verified by oath, and requisites of.
4. Clerk to file account and affidavit, and make an abstract thereof in judgment docket.
5. How person may proceed upon lien against property, and what judgment and execution he shall have.
6. In what cases execution may issue against such property.
7. Plaintiff may proceed by *scire facias* against original debtor, and all persons owning or possessing the property.
8. On judgment upon the *scire facias*, no execution to issue, except against the property charged.
9. Service of *scire facias* how.
10. How on persons out of the county.
11. How long such lien to continue.
12. When debt paid, creditor to enter satisfaction on lien, and how.
13. Penalty for neglect to enter such satisfaction, and how recovered.
14. Land on which building is situate, to be also subject to lien, when, and to what extent.

SEC. 1. All artisans, builders, and those who furnish materials for building, under contract or agreement with the proprietor thereof, shall have a lien upon such materials furnished, and upon the work and labor done on houses, or other edifices which have been, or may hereafter be erected by them, in whole or in part; each artisan, builder, mechanic and laborer, for his own work, and materials furnished.

SEC. 2. Every person who may wish to avail himself of the benefit of this act, shall file with the clerk of the circuit court of the county in which the building charged with the lien is situated, and within six months after such lien shall have accrued, a just and true account of the amount justly due him, after all just credits given, which is to be a lien on such building.

SEC. 3. Such account shall be verified by the oath of the person entitled to the lien, or some other creditable person for him, and shall contain a correct description of the property to be charged with such lien.

SEC. 4. The clerk shall file such account and affidavit in his office, and make an abstract therefrom in his judgment docket, containing the name of the person laying the lien, and of him against whom, or upon whom it is imposed, the amount of such lien, and a description of the property to be charged, for which the clerk shall be allowed the sum of one dollar, to be paid at the time of filing such account.

SEC. 5. Whenever any person shall wish to proceed against any property upon which he shall have a lien by virtue of this act, he may commence his suit in the ordinary form, and shall have judgment against the original debtor, for the amount that may be found due him, and shall have the liberty of taking his execution against such proportional part of the property charged with such lien, as his demand bears to the whole amount of the liens that are charged on such property, under the provisions of this act, which proportional part shall be decided by the court; and also against other property of the defendant.

SEC. 6. No execution shall issue against the property charged with such lien, unless the defendant shall have owned or possessed such property at the time the contract was made for such work and labor or materials, or unless a *scire facias* shall first have issued, and been served upon the owner or possessor of such property, requiring him to appear and show cause why judgment should not be entered up, and execution had against such property.

SEC. 7. In all cases under this act, it shall be lawful for the plaintiff to proceed by *scire facias* against the original debtor, and against

all and every person owning or possessing the property against which he wishes to proceed.

SEC. 8. No judgment rendered on such *scire facias* shall authorize the issuing an execution, unless against the property charged with such lien, or such part thereof as the court shall direct.

SEC. 9. The service of the *scire facias* shall be in the same manner as the service of a summons, except upon the defendants that cannot be found in the county where the proceedings are had, or who are not residents of the county.

SEC. 10. Service upon such defendants shall be made by fixing a copy of the *scire facias* upon the outer door of the building upon which the lien is charged, at least thirty days before the return day of such *scire facias*.

SEC. 11. No such lien shall bind any building for a longer time than two years after such building is finished, unless a suit shall have been brought in the manner provided by this act.

SEC. 12. Whenever any debt which is a lien on any building, shall be paid and satisfied, it shall be the duty of the creditor to enter satisfaction therefor on the account, in the same manner satisfaction is required to be entered on other judgments, and also on the judgment obtained on such lien.

SEC. 13. If any creditor neglect or refuse to acknowledge such satisfaction within thirty days after payment and request, he shall forfeit the amount of the lien which he claimed, to be recovered by action of debt.

SEC. 14. The land on which any building shall be erected, together with a convenient space around the same, not exceeding two acres clear of the building, shall be also subject to the liens which are to be had under and by virtue of the provisions of this act, if such land shall have been in the possession, or belonging to and owned by the person who shall have caused the same to be erected, at the time of erecting such building.

[Approved and in force: February 23, 1838.]

CHAPTER 97.

MILITIA.

SECTION
1. What persons liable to do militia duty.
2. Who exempted.
3. How divided into brigades and divisions.
4. County militia, how divided and arranged.
5. Rank of field and general officers heretofore elected, how determined.
6. Hereafter elected, how determined.
7. Of captains and subalterns, how determined.
8. How commanded, and staffs, how appointed.
9. Additional staff of generals.
10. Rank, pay and emoluments of staff.
11. Additional staff of commandants of regiments or battalions.
12. Election of 1836 for county officers of militia.
13. Election of 1837 for brigadier generals.
14. Elections of 1837 for major generals.
15. Elections to fill vacancies, how held &c.
16. Uniform, arms and accoutrements.
17. Resignations, how allowed, and penalties for resigning without approval.
18. Divisions or portions of militia, to be attached elsewhere, and how.
19. Contested elections how determined.
20. Official oath.
21. Office, when vacated. Grievances, how redressed.
22. Company, separate battalion and regimental musters.
23. Battalion musters.
24. Battalion and regimental courts martial.
25. Regimental officer drills, and penalty for not attending them.
26. Pay of drum-majors, fife-majors and adjutants.
27. Musters, what notice to be given of.
28. Central place to be chosen for muster.
29. Duty of officers and men at musters. Returns of force — abstracts thereof — returns of delinquencies, and penalties therefor.
30. Punishment for disobedience or disorderly behavior.
31. Fines and penalties.

SECTION
32. Division of companies into classes, and tours of duty how regulated.
33. Charges against officers, how tried, and judgment thereon.
34. Tour of duty may be performed by substitute.
35. Militia called into service on actual or threatened invasion, and how.
36. And on insurrrection or invasion premeditated — how, by whom, and when discharged.
37. Arrest and trial of officers for misbehavior, disobedience, &c.
38. Sergeant's guard to be appointed at musters.
39. Parents, guardians, masters and mistresses bound for payment of fines.
40. Duties of adjutant. Duties and bond of paymaster.
41. Company courts martial. Fines how collected and applied.
42. Charges against major general, brigadier general or brigade major, how tried &c.
43. Oath and duties of judge advocate and court martial.
44. Fines and forfeitures, how collected.
45. How appropriated and applied.
46. Privileges and exemptions from arrest, execution &c.
47. Volunteer Companies, how raised, officered and armed.
48. Execution for fines to run into another county.
49. Discipline, exercise &c.
50. Fines against superior officers, how collected.
51. Penalty for failure to make returns.
52. Officers to deliver books, &c. to their successors.
53. Penalty for voting when not qualified.
54. Punishment for ungentlemanly conduct.
55. Reviews, and notice thereof.
56. Adjutant general, duties and pay of.
57. Additional staff of governor, and their rank.

SEC. 1. Every able-bodied free white male inhabitant of this State, between the ages of eighteen and fortyfive years, shall be liable to perform military duty, except as hereinafter provided; but no person shall be called upon to perform military duty, who shall not at the time have resided at least two months in this State, and ten days within the bounds of the company to which he belongs, except in cases of actual or threatened insurrection or invasion; in which cases he shall perform such duty as may be required of other persons, and shall be subject to the like fines and penalties.

SEC. 2. Judges of the supreme and circuit courts, secretary of state, auditor and treasurer of the State, clerks of the supreme and circuit courts, postmasters who have the care of the mails of the United States, postriders, ferrymen on all public roads, and ministers of the gospel, shall be exempt from military duty, except in cases of imminent danger, insurrection, or invasion.

SEC. 3. The militia of this State shall be divided and designated as follows, viz: The militia of the counties of Hot Spring, Clark, Pike, Hempstead, Lafayette, Sevier, and Miller, shall constitute the first brigade; the militia of the counties of Saline, Pulaski, White, Conway, Pope, and Johnson, shall constitute the second brigade; the militia of the counties of Scott, Crawford, Franklin, Benton, Washington, Madison, Carroll, and Marion, shall constitute the third brigade, which brigades shall compose the first division; the militia of the counties of Izard, Van Buren, Independence, Jackson, Lawrence, and Randolph, shall constitute the fourth brigade; the militia of the counties of Greene, St. Francis, Poinsett, Phillips, Crittenden, and Mississippi, shall constitute the fifth brigade; the militia of the counties of Jefferson, Monroe, Arkansas, Chicot, and Union, shall constitute the sixth brigade, which brigades shall compose the second division.

SEC. 4. The militia of each county, when the number of persons therein subject to military duty shall be sufficient to constitute two battalions, (as hereinafter provided,) shall constitute one regiment; [illegible] number of militia-men in any county shall not be sufficient [illegible] battalions, the militia of such county shall con- [illegible] independent companies, as [illegible] county shall [illegible] regi- [illegible]

belong, in such manner as he shall direct. Each battalion shall consist of not more than four, nor less than two companies; and each company shall be composed of not more than one hundred, nor less than thirtytwo non-commissioned officers, musicians, and privates; and the regiments and battalions shall be numbered by the commander in chief, and arranged in numerical order.

SEC. 5. All commissioned officers shall rank according to their grades and the date of their commissions; but when officers of the same grade are elected or appointed on the same day, a difference in the date of their commissions shall not determine their rank. The rank of all the field or general officers of this State, being of the same grade, and who were elected on the same day, under the provisions of an act for the government and organization of the militia of this State, approved the twentyninth day of October, A. D. 1836, shall be determined by lot, to be drawn by the adjutant general, in the presence of the governor and secretary; which duty he is required to perform as soon as practicable: and immediately thereafter to transmit to each officer so drawn the result of each drawing; and it shall be the duty of the adjutant general to make an entry, in a book to be kept by him for that purpose, of the grade and rank of each officer whose rank is determined as specified in this act.

SEC. 6. It shall be the duty of the adjutant general to determine, by lot, as specified in the preceding section, the rank of all field or general officers, of the same grade, who may hereafter be elected on the same day, and record the same, and perform all other duties relating thereto, as required in the fifth section of this act.

SEC. 7. The rank of all captains and subaltern officers heretofore elected, or who may hereafter be elected, on the same day, belonging to the same regiment, shall be determined by lot, drawn in the presence of the colonel commandant; and the adjutant shall make a record of the grade and rank of each officer whose rank is so determined.

SEC. 8. Each division of the militia shall be commanded by a major general; each brigade, by a brigadier general; each regiment, by a colonel commandant; each separate battalion, and the first battalion in each regiment, by a lieutenant colonel; the second battalion in each regiment, by one major; each company, by one captain, one first and one second lieutenant, and such non-commissioned officers as are usually appointed to companies in the military service of the United States. The major general shall each appoint his aid-de-camp; the brigadier generals each his aid-de-camp and brigade major, the colo-

manding officer of each regiment and separate battalion, his paymaster, judge advocate, adjutant, quartermaster, sergeant major, and fife major ; and the captains, their drummers and fifers.

SEC. 9. The major generals of this State shall, in addition to their staff officers now required by law, appoint, for their respective divisions, one assistant quartermaster general, and one surgeon for the division, with such other staff as a major general is entitled to in the army of the United States ; and each brigadier general shall, in addition to his staff now required by law, appoint one brigade quartermaster, and one brigade surgeon, and such other staff as is required by a brigadier general in the United States army.

SEC. 10. The staff of the major general shall rank as lieutenant colonels of cavalry ; the staff of the brigadier general shall rank as majors of cavalry ; and the staff of colonels commandant shall rank as captains of infantry ; and the said officers, when called into actual service, either by the authority of this State, or the United States, shall be entitled to the same pay and emoluments as officers of the like grade belonging to the United States army.

SEC. 11. The commandants of regiments and separate battalions shall, in addition to the staff now allowed by law, each appoint a regimental or separate battalion surgeon, and a drum major.

SEC. 12. The militia of this State shall, on the first Monday in December next, (1836) at the usual places of holding elections, in the several counties, elect a colonel commandant of the regiment, in each county having a sufficient number to form a regiment ; and a lieutenant colonel commandant of the separate battalion, in each county not having a sufficient number to form a regiment ; which election shall be held by the same judges, be conducted in like manner, and the returns thereof be made in the same way, as the elections of civil officers are required by law to be held, conducted, and returned ; and said returns shall be made to the governor, within thirty days after the election ; and it shall be the duty of each colonel commandant of a regiment to proceed, without delay, after he shall be commissioned by the governor, to divide his regiment into two battalions, one of which shall be called the first, and the other the second battalion ; and such division shall be made as nearly equal and equitable as may be practicable ; and he shall, in like manner, divide the same into companies ; and, having divided his regiment into battalions and companies as aforesaid, he shall order an election to be held in each division, for the election of a lieutenant colonel for the first battal-

ion, and a major for the second battalion, and one captain and a first and second lieutenant for each company; and he shall give at least ten days' public notice, in writing, of such election, in each company division within his regiment, designating therein what officers are to be voted for; and the lieutenant colonel commandant of each separate battalion shall, in like manner, divide his battalion into companies, and order an election for company officers to be held as aforesaid, and give the like notice thereof; and all such elections shall be held at the usual places of holding elections for civil officers in each division, by the same judges, and conducted in the same manner, as elections for civil officers, and the returns thereof shall be made to the colonel of the regiment, or lieutenant colonel of the separate battalion, as the case may be, within ten days thereafter; and it shall be the duty of each colonel of a regiment, and lieutenant colonel of a separate battalion, to preserve and keep said election returns, and within five days thereafter to make out an abstract of such election returns, under his hand and seal, and transmit the same, by mail, to the governor, whose duty it shall be to commission all persons elected as aforesaid.

SEC. 13. There shall be an election held at the court house, in each and every county in this State, on the first Saturday in April next, (1837,) for the election of one brigadier general for each brigade; at which time and place all the field officers and commissioned company officers of the regiment or separate battalion in each county shall attend; and the two officers of each regiment or separate battalion then present, highest in command, shall be judges of such election, and appoint two clerks; and each clerk, under the direction and superintendence of the judges, shall keep a separate poll book, in which the name and grade of each person voting shall be entered, and the name of each person voted for shall be distinctly shown, so that it shall plainly appear for whom each person voted. The votes shall be counted by the clerks, in the presence of the judges; and the number given to each person shall be distinctly stated at the bottom in writing, at length, subscribed by the judges, and countersigned by the clerks; one of which said poll books shall be delivered to, and kept by, the colonel of the regiment or lieutenant colonel of the separate battalion; and the other shall, immediately after the election, be transmitted by the judges, or one of them, by mail, to the governor; and it shall be the duty of the governor, in the presence of the secretary of state, to open the returns of said election, and count the votes; and if two or more persons shall have an equal number of votes, the governor shall give the casting

vote, and commission the person elected in each brigade; and if he shall not have received full returns from each brigade, within ten days after the time in which the returns should have been made, he shall proceed to act in like manner upon such returns as shall be received, and commission such persons in each brigade from which full returns shall not have been received, as shall appear, from the returns received, to have been elected.

SEC. 14. The elections for major generals shall be as follows:— The election for major general for the first division shall be held on the first Monday in June, A. D. 1837, by the field officers of the first brigade, at the town of Washington; by the field officers of the second brigade, at the city of Little Rock; and by the field officers of the third brigade, at the town of Fayetteville; the brigadier general, or senior officer present at such election, shall immediately transmit the votes so taken, to the governor, by mail, who, in the presence of the secretary of state, shall proceed to count the same, and commission the person elected; and if two or more persons shall have received an equal number of votes, the governor shall decide who shall be the major general. The election for major general of the second division shall be held on the first Monday in June, A. D. 1837, by the field officers of the fourth brigade, at the town of Batesville; by the field officers of the fifth brigade, at the St. Francis court house; and by the field officers of the sixth brigade, at the Post of Arkansas; and the brigadier general, or senior officer present at such election, shall immediately transmit the votes so taken, to the governor, by mail, who, in the presence of the secretary of state, shall proceed to count the same, and commission the person elected; and if two or more persons shall have an equal number of votes, the governor shall decide who shall be the major general.

SEC. 15. Elections to fill vacancies shall be held as follows: For the election to fill a vacancy in the office of major general, the governor shall issue his order, giving sixty days' notice. All elections for major general shall be held at the usual places of holding regimental and separate battalion musters, in each and every county; and such elections shall be held and conducted in the same manner as elections for brigadier general are required to be held and conducted by the thirteenth section of this act. To fill a vacancy in the office of brigadier general, the major general shall issue his order, giving forty days' notice. To fill a vacancy in the office of colonel of a regiment, or lieutenant colonel commanding a separate battalion, the brigadier general

shall issue his order, giving thirty days' notice, directed to the sheriff (or, if there be no sheriff, then to the coroner) of the county where such officer is to be elected, whose duty it shall be to give notice thereof, and hold the election as in cases of general elections. To fill a vacancy in the office of lieutenant colonel or major of a battalion, the colonel of the regiment shall issue his order, giving fifteen days' notice. To fill a vacancy in the office of captain, the lieutenant colonel or major of the battalion shall issue his order, giving ten days' notice; and to fill a vacancy in the office of first or second lieutenant, the captain shall issue his order, giving five days' notice. The election for brigadier general shall be held at the court house in each county in the brigade, at the time appointed in the order of the major general, by the field officers and commissioned company officers in the brigade, who shall vote for a brigadier general; and the senior officer present shall transmit the votes so taken to the major general of his division, who shall count the same, and send to the governor a certificate of the person elected; and the governor shall commission him accordingly; and if two or more persons shall have an equal number of votes and a higher number than any other candidate, the major general shall decide who is to be the brigadier general. The election for colonel of a regiment, or lieutenant colonel of a separate battalion, shall be held at the time and places prescribed in the order of the brigadier general, by the officers and privates, in their respective regiments or separate battalions, who shall vote for a colonel of the regiment, or lieutenant colonel of the separate battalion; and the senior officer present at each place of voting shall be judge of such election, and shall appoint a clerk, who shall keep a poll book of such election, and state therein the name of each person who votes, and designate plainly the person for whom each vote received is given; and the judge shall count the votes, and certify the result at the foot of the poll books, and send the same to the brigadier general, who shall send to the governor a certificate of the person elected, and the governor shall commission him accordingly; and if two or more persons shall have an equal number of votes and a higher number than any other candidate, the brigadier general shall decide who shall be the officer. The election for lieutenant colonel or major of a battalion, shall be held at the time and places prescribed in the order of the colonel, by the officers and privates in their respective battalion, who shall vote for lieutenant colonel or major of the battalion, and the election shall in all things be conducted in the same manner as the election for colonel of the regiment is directed by this act to be

conducted ; and the return thereof shall be sent to the colonel, who shall send to the governor a certificate of the person elected ; and if two or more persons shall have an equal number of votes and a higher number than any other candidate, the colonel shall decide who shall be the officer. The election for captain, or first or second lieutenant, shall be held at the time and place prescribed in the order of the lieutenant colonel or major of battalion, in the case of the election of captain, or of the captain in the election of lieutenant, by the officers and privates of the company, and shall in all things be conducted as the election for lieutenant colonel or major of the battalion is by this act required to be conducted, except that the returns of the electionf or captain shall be made to the lieutenant colonel or major of the battalion to which such company belongs ; and the returns of the election for lieutenant shall be made to the captain ; and if two or more persons shall have an equal number of votes for captain and a higher number than any other candidate, the major or lieutenant colonel of the battalion shall decide who shall be the captain, and send to the governor a certificate of the person elected ; and if two or more persons shall have an equal number of votes for the office of first or second lieutenant and a higher number than any other candidate, the captain shall decide who shall be the officer, and shall send to the governor a certificate of the person elected. In all elections for any colonel, lieutenant colonel, major, captain, or lieutenant, if there shall be no officer present to conduct the same, a majority of the militia-men present shall appoint some person who shall act in lieu of such officer, and in like manner conduct the election, and make return thereof.

SEC. 16. The commissioned officers of companies shall each wear a sword, and such other uniform, when on parade, as a majority of such officers shall agree upon, when called together for that purpose ; and all other officers of the militia of this State shall provide themselves with and use the same uniform that is or shall be used by the officers of the same grade in the army of the United States, which shall be used and worn by them at all drills, trainings, and musters. Each non-commissioned officer and private shall provide himself with a musket, cartridge box, and nine charges of powder and ball, made into cartridges, or a rifle, powder horn, and shot pouch, with an equal quantity of ammunition, suitable thereto, in good condition, one spare flint, one pricker and wiper, which arms shall be carried and used by every non-commissioned officer and private, at every muster required by this act : *Provided*, that any non-commissioned officer or pri-

vate who shall satisfy the court martial of his company that he has no such arms, and that he is unable to procure the same without producing distress to himself, shall be exempt from the payment of any fine for such delinquency.

SEC. 17. No person who shall be elected and commissioned in the military department of this State, shall resign the same within three years after the date of his commission, unless he shall offer for a higher command, be removed by a court martial for misdemeanor in office, or be admitted to do so by his superior officer. If a major general, his resignation shall be approved of by the governor; if a brigadier general, by the major general; if a colonel of a regiment, or lieutenant colonel of a separate battalion, by the brigadier general; if a lieutenant colonel or major of a battalion, by the colonel of the regiment; if a captain or lieutenant, by a majority of the field officers of the regiment, or the commandant of the separate battalion, under the following penalties, viz: If a major general, in a sum not exceeding one hundred dollars; if a brigadier general, in a sum not exceeding seventyfive dollars; if a colonel of a regiment, or lieutenant colonel of a separate battalion, in a sum not exceeding fifty dollars; if a lieutenant colonel or major of a battalion, in a sum not exceeding forty dollars; if a captain, in a sum not exceeding thirty dollars; and if a first or second lieutenant, in a sum not exceeding twenty dollars; to be recovered and appropriated as other fines and penalties are by this act directed.

SEC. 18. In all cases where the militia in any of the military divisions of this State shall fail to elect such officers as they are required by law, such division shall be attached to, and form a part of, the militia of some other division which shall have the requisite officers, and shall be subject to perform all military duty by this act required, under the command of the officers of the division to which they may be attached. If the delinquency or failure shall occur in a company division, the militia of such division shall be attached to the next adjoining company in the same battalion, if any company of the battalion to which such division belongs shall have the requisite officers, by an order of the lieutenant colonel or major of such battalion; and if there shall be found no company in the battalion organized and officered as required by this act, the militia of each company of such battalion shall be attached to the most convenient company of the regiment which shall be found to have the requisite officers, by an order of the colonel of such regiment; and if any regiment or separate battalion

shall be found unorganized, and without the requisite officers, the militia of such regiment or separate battalion shall be attached to the most convenient regiment or separate battalion in the brigade which shall be found to have the officers and organization required by law, by an order of the brigadier general of the brigade to which such regiment or battalion may belong; if any brigade shall be found unorganized, and without the requisite officers to command the same, the militia of such brigade shall be attached to the most convenient brigade in the division to which such brigade shall belong which shall be found to have the officers required by law, by an order of the major general of such division; and in all cases when the militia of any division shall be attached to any other division, as herein before provided for, the militia so attached shall be commanded by the officers of the division to which they shall be attached, and shall be liable to the same duty, and subject to the same fines and penalties, as if they had previously belonged to such division; and the militia of any division attached to another division, as aforesaid, shall remain subject to such command until they shall be admitted, by an order of their superior officer to whose command they may be attached, to elect the requisite officers to command such division, and shall have reported to him that they have all the requisite officers for the command of their separate division duly elected and commissioned; after which the command of the officers of the division to which they shall have been attached shall cease, and shall devolve on the officers of the division elected and commissioned as aforesaid; and if any division shall be found a second time unorganized, and without officers, as required by this act, they shall in like manner, be again attached to some division having the requisite officers and organization, and shall be debarred the privilege of again separating from the division and command to which they shall be attached, and shall permanently compose a part of said command, anything in this act, or the law of the land, to the contrary notwithstanding; and the officer whose duty it is made by this act to order the militia of any of the divisions to be attached to some other division, as provided for by this act, shall, at the time of issuing any such order, give public notice thereof to the militia of the division to be attached as aforesaid; if it be a company, the notice shall be in writing, put up in at least two of the most public places in the company; if a battalion, the like notice shall be put up in at least one of the most public places in each company of the battalion; if a brigade, regiment, or separate battalion, the like notice shall be put up in at

least one of the most public places of the brigade, regiment, or separate battalion, or be published, for three weeks successively, in one or more of the newspapers published in this State; and any notice given as aforesaid, shall be deemed in law sufficient; and the militia, so notified, shall from the time of issuing such order and giving such notice, be considered and treated as a part of the division to which they may be attached, and compose a part of the command of the officers of the division to which they are attached, anything in this act to the contrary notwithstanding; and any general order issued by the commander in chief, any major general, or brigadier general, and published in any newspaper printed in this State, for three weeks successively, shall be deemed in law a sufficient notice thereof to the militia and all persons to be affected thereby, and shall be, to all intents and purposes, as valid as if the same was communicated by express, or in other manner whatsoever.

SEC. 19. All elections in the militia department which may hereafter be contested, shall be determined in the following manner, viz: If the election of a major general shall be contested, the party contesting such election, shall furnish the governor with a fair statement of his reasons in writing, upon the receipt of which he shall order a general court martial to be held at such place as he may designate in the division to which such major general belongs, at which court each militia officer of such division not under the grade of a field officer, shall be entitled to a seat; and if the election of a brigadier general shall at any time be contested, the complainant shall make the like complaint and application to the major general of the division to which such brigade belongs, who is, upon the receipt thereof, required to order a brigade court martial, as in other cases; and when the election of a colonel of a regiment, or lieutenant colonel of a separate battalion, or lieutenant colonel or major of a battalion shall be contested, complaint and application shall, in like manner, be made to the next highest officer in command, who, upon receipt thereof, shall order a regimental court martial accordingly. If under the rank of a field officer, all complaints and applications shall be made to the commanding officer of the regiment or separate battalion where the contest exists; and, in order to explain and fix a principle to govern the several courts martial in their duties respecting contested elections, it is hereby declared that the person contesting shall in all cases be bound to furnish satisfactory proof to the court, that the person whose election is contested did receive a number of illegal votes, which, if deducted, would give a

majority to the person contesting; and if the contesting person shall fail to establish his charge, or if the charge shall be sufficiently supported, in either case the court shall report in favor of the person having the greatest number of legal votes as being duly elected; and the president of each court martial shall certify, under his hand, the name or names of the person or persons thus duly elected; which certificate, if the officer shall be of the grade of general or field officer, shall be directed and sent to the governor; if commissioned officers of companies, the certificate shall be signed as aforesaid, and be directed and sent to the colonel of the regiment or lieutenant colonel of the separate battalion, and by him to the governor, who shall issue commissions in either of the above mentioned cases; and, in order to provide more amply for deciding contested elections, it is hereby declared that where the cause shall at any time arise from any illegal proceedings of any person ordering, conducting, or judging any election, on proof thereof being made to the satisfaction of the court martial, such election shall be declared void, and the president, by and with the authority of such court martial, shall direct the proper officer to issue an order or orders for an election to fill such vacancy, which election so ordered shall in all things be conducted in the same way as other elections to fill vacancies in like offices are by this act directed.

SEC. 20. Each and every officer elected and commissioned as aforesaid, shall, previous to entering on the execution of the duties of his office, take the following oath: "I, —— ——, do solemnly swear, that I will support the constitution of the United States and of this State, and that I will faithfully and justly execute the duties of the office of —— in the —— (company, battalion, regiment, brigade, or division, as the case may be) of the militia of this State, according to the best of my skill, power, and judgment, so help me God:" a copy of which shall be endorsed on the back of the commission, signed by the person taking the same, and attested by the officer who administers the oath.

SEC. 21. If any commissioned officer shall remove out of the bounds of his proper division, brigade, regiment, separate battalion, or company, or offer himself a candidate for any other military appointment, or shall be absent therefrom otherwise than on military duty, for more than twelve months at one time, his office shall thereby become vacated; and if any commissioned officer shall think himself injured by his superior officer, and shall, upon due application made to him, be refused redress, he may complain to the brigadier general, who

shall order a brigade court martial, to be held under the rules and restrictions prescribed by this act; if any inferior officer or private shall think himself injured by his captain, or any other superior officer in the regiment or separate battalion to which he belongs, he may complain to the commanding officer of the regiment or separate battalion, who shall order a court martial; and such court shall determine the complaint agreeably to the nature of the case: *Provided*, that the person complaining shall exhibit his charge in writing, supported by oath or affirmation.

SEC. 22. Every captain or commanding officer of a company, shall hold a company muster twice in each year, on the first Saturdays in April and October, and shall require the non-commissioned officers of his company, or such of them as he shall designate, to warn his men of the place of muster, in all cases where notice thereof was not given at the previous muster; and every commanding officer of a regiment or separate battalion, shall hold a regimental or battalion muster once in each year, on the third Saturday in October, and the commanding officer of each regiment and separate battalion shall give notice of the place of holding his regimental or battalion muster, to the commanding officer of each company belonging to his command, previous to the company muster in October; and the commanding officer of each company shall notify his command of the same, at the company muster in October, annually.

SEC. 23. Each battalion shall hold one muster annually; the first battalion in each regiment shall hold a muster on the second Saturday in April, and the second battalion shall hold a muster on the third Saturday in April; and the officers of each battalion shall have the privilege of choosing their muster ground.

SEC. 24. Each regiment shall have a court martial at their respective regimental muster grounds, on the second Friday of November, annually, and the succeeding day, if found necessary, to consist of at least five members, the oldest of whom shall be president, and be of the grade of field officer; and if there be no field officer present, the senior officer present shall preside. The court shall be sworn to do their duty, by the judge advocate of the regiment; and when convened, shall have power to inquire into the age and abilities of all persons brought before them, and exempt such as may be judged incapable of duty; to inquire into all neglects or omissions of duty, as well by officers as by privates, to hear and determine all appeals which may be made by non-commissioned officers or privates who may think them-

selves aggrieved by any sentence or decree of their battalion or company court martial; and to order and dispose of all fines and forfeitures arising under this act, unless otherwise disbursed by law. The first battalion in each regiment shall hold a court martial on the last Saturday in May, annually; and the second battalion in each regiment shall hold a court martial on the first Saturday in June, annually, at the places of holding the battalion musters, each court martial to consist of at least five members; and the officer appointed to the command of each battalion shall attend the battalion musters, and may preside in the courts martial, or may direct the senior officer present to preside; and such courts martial shall be governed by the same rules, regulations and restrictions as regimental courts martial, reserving to any person who may think himself aggrieved by any sentence of such court the right of appeal to the next regimental court martial. In case of any such appeal, it shall be the duty of the judge advocate to carry up the same to the succeeding regimental court martial, whose duty it shall be to determine on all such appeals, agreeably to law and the nature of the case.

SEC. 25. The commissioned officers of the aforesaid regiments of infantry shall meet at the places of holding their regimental musters, armed with a good rifle or smooth bore, for the purpose of being trained and instructed in their duty by the adjutant; which meeting shall be on the Thursday preceding the regimental musters, and shall continue two days; the senior officer present shall call the roll each day, and report all delinquents to the next regimental court martial; and every officer failing to attend, or not appearing armed as aforesaid, without a reasonable excuse, to be judged of by the court martial, shall be fined in the sum of five dollars, to be appropriated as other fines are by this act directed.

SEC. 26. The drum majors and fife majors shall be allowed one dollar for each day they may attend to instruct the drummers and fifers in their regiments, to be paid out of any fines and forfeitures collected under the authority of this act; and the adjutants shall be allowed one dollar and fifty cents for each day they may be engaged in training and disciplining the regiments and battalions, to be paid out of the fines and forfeitures of the regiment.

SEC. 27. In all cases where the day has not been previously assigned and particularly mentioned at the last preceding muster, (which is hereby declared to be legal notice,) for the troop, company, battalion, regiment, or brigade, to assemble on parade for muster, review,

or inspection, it shall be the duty of the commanding officer of the troops so to be assembled, to cause the orders to that effect to be given to the captains of the respective companies, at least ten days before the said parade ; and it shall be the duty of the said captains respectively, to cause three days' previous notice to be given to each individual of the company, by an officer or non-commissioned officer, or in writing left at his usual place of abode : *Provided however*, that when the commander in chief, the brigadier general, the commanding officers of regiments, battalions, and detached companies, for the purpose of repelling invasion or attack, or to aid and support the civil authorities, shall command the service of the militia, which they are hereby authorized to do, such previous notice shall not be necessary, but, on the contrary, every person subject to military duty shall march at a moment's warning.

SEC. 28. Whenever, by this law, the power is given to the commanding officers of regiments, battalions, or companies, to appoint a place for the muster, review, or exercise, of any regiment or corps, or for the meeting of officers, or courts for assessments of fines, it shall be the duty of such commanding officer to choose as central a place for such muster, review, exercise, or other meetings, as the circumstances of the case will admit.

SEC. 29. Every officer, non-commissioned officer, musician, and private, shall appear at his respective muster-field, whether regimental, battalion, or company, on the day appointed, by ten o'clock in the forenoon, the officers in uniform, and armed and equipped, and the privates armed as directed by this act, and not leave the parade until permitted by the officer commanding the troops ; and it is hereby made the duty of said commanding officers to exercise their respective corps at least three hours of each regular muster day. At every muster, each captain or commanding officer of a company shall direct the first sergeant of his company to call the roll, in his presence, between the hours of ten and eleven o'clock, and also after the exercise is over and before the men are discharged ; and the commanding officer of each company shall examine every person belonging to his company, note all delinquencies, make out an accurate statement of the strength and condition of his company, and make return thereof to the commanding officer of the battalion to which he belongs, at or before the next battalion muster thereafter, whose duty it shall be to return the same to the commanding officer of his regiment, within ten days after the next battalion muster, who shall, within twenty days after the next

regimental muster, make out an accurate statement of the strength and condition of his regiment, and return the same to the commanding officer of the brigade to which he belongs; and the commanding officer of a separate battalion shall make a like return, twenty days after his battalion muster, annually; and the brigadier general shall, in like manner, make a return of the brigade under his command to the major general commanding the division to which his brigade belongs, within thirty days thereafter; and the major general of each division shall, in like manner, make a return of the division under his command to the adjutant general, within twenty days thereafter; and it shall be the duty of the adjutant general to furnish such blank forms of all the different returns, and explanations of the principles on which they should be made, as shall be approved by the commander in chief, and also to receive the returns of the militia throughout the State, from all which he shall make the proper abstracts, and lay the same before the commander in chief of this State, within twenty days after they shall be received by him, or sooner, if required by the commander in chief; and the commander in chief, when required, shall lay the same before the General Assembly; and it shall be the duty of the commanding officer of each company, within ten days after any company muster, to make a return of all delinquencies in his company to the judge advocate; and the commanding officer of each battalion and regiment shall, in like manner, within ten days after any battalion or regimental muster, make a return of all delinquencies in his command to the judge advocate; and the judge advocate shall, in every instance, present the return of all delinquencies to the proper court martial, or court for the assessment of fines, at the first sitting thereof after he shall have received any such return; and the court shall act upon the same, and inflict a legal penalty on every delinquent so returned, unless the person charged with such delinquency shall, by sufficient evidence, acquit himself of the charge.

SEC. 30. If any non-commissioned officer, musician, or private, at any regimental, battalion, or company muster, shall disobey the legal and proper orders of his superior officers, appointed or otherwise, or act in a disorderly manner, or if any bystander, at any such muster, shall insult, or otherwise molest, any officer, non-commissioned officer, musician, or private, while on parade, or employed in any other service authorized by the laws of this State, the commanding officer of the regiment, battalion, troop, or company, as the case may be, may order such person or persons to be arrested and put under guard for

any length of time not exceeding three hours; and the person or persons so offending, shall, moreover, be subject to pay such fines as may be imposed in the manner hereinafter provided.

SEC. 31. In order to compel observance of the provisions of this act, and for the purpose of introducing a proper degree of subordination and discipline in the operations of the militia of this State, the following penalties shall be incurred and inflicted in the manner hereinafter directed: that is to say—the adjutant general or brigade inspector, for a violation or neglect of those duties imposed upon him by this act, shall incur a penalty not exceeding one year's pay, nor less than three month's pay; any commissioned or staff officer for failing to perform the duties required of him respecting the appointing and giving notice of regimental, battalion, or company musters, or for non-appearance at such muster, in uniform, and equipped as the law directs, or for failing to make any report which by law he is directed to make, shall forfeit and pay as follows: that is to say,—commandant of a regiment or separate battalion, the sum of fifty dollars; lieutenant colonel or major of a battalion, forty dollars; commanding officer of a company, or adjutant, twenty dollars; and those officers respectively shall, moreover, be liable to be cashiered at the discretion of a court martial. Each non-commissioned officer failing to give notice of any muster, when he shall receive orders for that purpose, without a reasonable excuse, shall be fined in the sum of five dollars. Each non-commissioned officer, musician, or private, failing to attend any muster, review, or inspection, disobeying any order which, by virtue of this act, his superior officer may give, failing to repair to the prescribed rendezvous, with his arms and accoutrements, when properly warned so to do, failing to do his duty when there, or absenting himself without a lawful excuse, shall forfeit and pay, for non-appearance on parade, two dollars, for not being equipped and accoutred as this act directs, fifty cents, and for absence without leave after appearance, two dollars. Every non-commissioned officer, appointed in pursuance of this act, shall serve for the term of one year, or pay a fine of ten dollars, the payment of which penalty shall, if such person insist on the privilege, exempt him from the duties of such office for the space of two years.

SEC. 32. It shall be the duty of commanding officers of companies to proceed forthwith to divide their companies into classes, by ballots, from one to three, for the purpose of a regular routine of duty when called into actual service, and to return a roll of each class, and its number in rotation, within thirty days thereafter to the commanding

officer of the battalion, who shall transmit the same to the commanding officer of the regiment, who shall cause the same to be recorded by the judge advocate; and the commanding officer of the regiment or separate battalion shall make a return of the same to the brigadier general: *Provided*, that every non-commissioned officer and private of the militia who shall have performed the last tour of duty, shall be set in the third class as nearly as circumstances will admit; and if there are any that have not performed a tour of duty, they shall be set in the first class, and those who have performed the oldest tour of duty in the second class, as nearly as circumstances will admit, any thing in this act to the contrary notwithstanding. Every militia-man moving out of one company into another, shall apply to the commanding officer of the company to which he did belong, who shall give him a certificate certifying the class wherein he was arranged, and whether he had served his tour of duty or not, and also the date and time of such service; which certificate the said militia-man shall produce to the captain or commanding officer of the company into whose bounds he shall so have removed, within five days after the commencement of his residence within the bounds of such company; and such officer is hereby required to enrol him in his numerical class specified therein; and any militia-man so removing, and failing to produce such certificate, shall be arranged and enrolled in the class destined to perform the next tour of duty. If any captain or commanding officer of any company shall refuse to grant such certificate, upon application made to him for that purpose, he shall, for such refusal, forfeit and pay a sum not exceeding ten dollars, to be recovered and applied as other fines are by this act directed.

SEC. 33. When any colonel of a regiment, or lieutenant colonel of a separate battalion, shall be charged with mal-administration, or neglect of duty, it shall be lawful for any commissioned officer to exhibit to the brigadier general of his brigade, or such other officer as shall at the time have the command of the brigade, a fair statement, in writing, of the charge or charges, and the facts intended to establish the same, and the brigadier general is hereby authorized to order a brigade court martial, to consist of at least seven members, none to be under the grade of field officers, who, when assembled, shall take and subscribe the same oath prescribed for regimental courts martial. The said court, being thus sworn, shall inquire into the nature and truth of the charge or charges; and if the officer accused shall be found guilty of a misdemeanor in office, he shall be cashiered; if guilty of a ne-

glect of duty, he shall forfeit and pay any sum not exceeding fifty dollars ; and when any lieutenant, captain, lieutenant colonel of the first, or major of the second battalion of any regiment, shall be charged with any misdemeanor in office, or neglect of duty in office, it shall be lawful for any officer, non-commissioned officer, or private, to exhibit to the colonel of the regiment, or lieutenant colonel of the separate battalion, a fair statement of the charge or charges, and the facts intended to establish the same ; and the colonel or lieutenant colonel to whom any such complaint is made, in writing, may in his discretion order a regimental or battalion court martial, to consist of at least five commissioned officers, who shall take and subscribe the oath directed to be taken by this act ; and, when sworn, shall inquire into the nature and truth of the charge or charges so exhibited ; and if found guilty of a misdemeanor in office, the officer accused shall be cashiered ; and if guilty of neglect of duty, shall be fined as prescribed by law ; or the commanding officer may refer such charges to the next regimental or battalion court martial ; but no sentence of any court martial cashiering any officer shall be final, until the same shall be laid before the commander in chief, and be by him approved, if the officer cashiered shall pray an appeal to him from such decision ; otherwise the same shall be final.

SEC. 34. If any person shall be called upon to perform a tour of duty, such person shall be acquitted, provided he furnishes his commanding officer with an able-bodied substitute in his room or stead. No substitute shall be received unless armed as by this law directed ; and if any substitute should be called into actual service in his own turn, previous to the expiration of the time for which he shall have been enrolled, then the person procuring said substitute shall march in his room, procure a substitute for the remainder of the term, or be liable to the same penalties as if called upon in his own name. Any person called upon to perform a tour of duty as aforesaid, and serving by himself or substitute, or otherwise, paying such fine as the court martial shall adjudge adequate to the offence, shall not be bound to perform any tour of duty until regularly called upon in rotation.

SEC. 35. When it may be necessary to call into actual service any part of the militia, on actual or threatened invasion of this State, or any of the neighboring States or Territories, it shall and may be lawful for the governor to order into actual service such part of the militia as the exigency may require ; and when any part of the militia of this State shall be called into actual service, it shall be the duty of the

commander in chief to order, from the regiment or battalion from which the militia shall be detached, in proportion to the number of men furnished by said regiment or battalion, a sufficient number of officers, giving preference to the senior officers of said regiment or battalion, to officer said detatchment; and in all cases the officers of the militia of this State shall be called on to perform their tours of duty in rotation, in the same manner as is by this act directed for the several classes of the militia: *Provided however*, that no militia-man shall be compelled to serve more than six months at one time, and that sixty days shall be accounted one tour of duty.

SEC. 36. In case of actual invasion or insurrection, or an invasion threatened or premeditated against this State, or any part thereof, it shall be lawful for the governor, or any officer by him directed, to order into actual service all or such parts of the militia as the exigency may require, and to discharge said troops as soon as he may judge consistent with the interests of the State; and if a sudden insurrection should be raised, or invasion made upon any county within this State, the commanding officer of the militia of said county is hereby authorized and directed to order out such part of the militia as he may think necessary for suppressing or repressing such invasion, and may, if in his judgment the exigency of the occasion shall require it, make a requisition on the commanding officer of the militia of any adjoining county not so invaded or endangered, whose duty it shall be to comply with such requisition: *Provided always*, that it shall be the duty of such officer so ordering out the militia, or any part thereof, to transmit to the governor, as early as practicable, a statement of his proceedings, setting forth his reasons for exercising such authority. No such invasion or insurrection shall be taken to be premeditated, unless it is so stated by one or more credible and respectable persons upon oath; and in all cases when any part of the militia is called into service by virtue of such authority, the commanding officer shall, in transmitting his reasons to the governor, enclose a copy of the deposition so taken. The militia shall be discharged within thirty days from and after their rendezvous, except they shall be continued in service for a longer time by the executive authority of this State; and the militia of this State, when in actual service, shall be governed by the rules and articles governing the armies of the United States.

SEC. 37. If any officer shall misbehave, or act with insubordination or in disorder, or in violation of the foregoing provisions, while on parade, or assembled for review, muster, or inspection, or neglect or

violate any other duties authorized or required by this act, he shall be immediately arrested by the commanding officer present, and reported to the brigadier general or commander in chief, who for this as well as all other violations of this act, shall order a court martial or court of inquiry for the investigation of the charges against the officer on trial, as the case may appear to require. Every officer to be tried by a court martial shall have ten days' notice given him of the time and place appointed for the trial, and shall be supplied with a copy of the charges exhibited against him, ten days at least before the sitting of said court. In every court martial for the trial of an officer, not less than two thirds of the members present shall agree in the sentence or judgment of said court; otherwise the person charged shall be acquitted; and when the members shall be required to give their votes on a question or decision, they shall begin with the youngest in commission: *Provided*, that no commissioned officer shall be allowed to resign his commission while under arrest.

SEC. 38. When a brigade, regiment or battalion assembles for review, inspection or exercise, the commanding officer shall order a guard of a subaltern or sergeant, and such number of men as he may deem necessary, whose duty it shall be to receive and guard all such persons as shall be ordered under their charge by the commanding officer or inspector, for misbehaving or refusing to attend to discipline, in exercising and performing all those evolutions and other duties which are required of them by this act.

SEC. 39. Parents shall be bound for the payment of fines incurred by their sons under the age of twentyone years, guardians for the payment of fines incurred by their wards, and masters or mistresses for the payment of fines incurred by their servants or apprentices, and they shall be respectively charged therewith by the court of assessment accordingly.

SEC. 40. It shall be the duty of the adjutant of each regiment to keep a register of the officers belonging to his regiment, for courts martial and courts for the assessment of fines. It shall be the duty of the paymaster of each regiment, independent of such duties as may be required of him by the commander in chief, when called into actual service, to demand and receive from the different persons who have heretofore acted as sheriffs or paymasters, as well as sheriffs who are now in office, all moneys which they have respectively received, or ought to have received, as militia fines; and in case such late paymaster shall neglect or refuse to pay the amount of fines so by him collect-

ed, or which ought to have been collected, on demand being made by the present paymaster of the regiment of the county of which he is or has been sheriff or paymaster, it shall be lawful for such present paymaster, on giving ten days' previous notice to such sheriff or late paymaster, in or out of office, to recover judgment in a summary way, by motion against such sheriff or paymaster, in the name of the present paymaster, for the use of the regiment to which he may belong, in any court of record in the county in which said sheriff or paymaster may reside; also, to receive and receipt for all moneys collected for fines and forfeitures within his regiment, and safely to keep the same until drawn out of his hands by warrant of the commanding officer of the regiment or battalion to which he may be attached; which warrant shall be given in writing, by the said commanding officer, for the use of the said regiment or battalion, specifying the objects to which the moneys so drawn for are to be applied. The judge advocate shall transmit to the paymaster all the sentences of assessment or appropriation which shall from time to time be made by the court martial or court of assessment; and it shall be the duty of the paymaster to receive and file the same. The paymaster shall, previous to entering on the duties of his office, in addition to his other qualifications prescribed by this act, execute a bond to the governor of the State, with security, to be approved by the commander of the regiment, in the sum of one thousand dollars, for the faithful discharge of his duties as paymaster; and the said paymaster shall, annually, in the month of May, settle with the field officers of his regiment, or a majority of them, the amount of all moneys received and disbursed by him; and he shall be entitled to seven per centum on all moneys so by him received and disbursed or paid out as above mentioned; immediately after which settlement, it shall be the duty of such paymaster to report, fully, and at large, a detailed statement of his accounts to the commanding officer of his corps.

SEC. 41. The captain and subaltern officers of each and every company, or a majority of them, shall, on the muster day next succeeding the muster of each company at which there has been any delinquency or delinquencies, hold a court for the assessment of fines in each company; and any person thinking himself aggrieved by the decision of such court, shall have liberty to appeal therefrom to the next battalion or regimental court for the assessment of fines; and the commanding officer of a company shall issue his warrant, directed to one of the sergeants of the company, commanding him to cause the fine or fines to be made; and such sergeant shall be authorized and required

to levy and make distress and sale of the goods and chattels of such delinquent, and return the overplus, if any, to the person whose property he may sell as aforesaid. All fines collected by virtue of the provisions contained in this section, shall be paid to the captain of such company within ten days after the same may be collected, and by him applied to the purchase of a drum, fife, and colors, and for other purposes, for the use of his company.

SEC. 42. When either the major general, brigadier general, or brigade major, shall be charged with mal-administration or neglect of duty in office—if a major general, it shall be lawful for any militia officer, not under the grade of field officer, to exhibit to the governor for the time being, a fair statement of the charge or charges, and the facts intended to establish the same, who is hereby authorized to order a general court martial, to consist of at least nine members, none to be under the grade of a field officer, who, when convened, shall take and subscribe the same oath prescribed for regimental courts martial. The said court thus sworn, shall have power to inquire into the nature of the offence; and if it shall constitute a misdemeanor in office, he shall be removed from the same; if neglect of duty, he shall forfeit and pay a sum not exceeding one hundred dollars, to be collected as in similar cases of fines. If a brigadier general or brigade major shall be guilty of either of the aforesaid offences, the charge shall be exhibited to the major general, whose duty it shall be to issue his order to the senior colonel commandant in the brigade in which the person charged resides, by virtue of which order said colonel shall hold a court martial, and proceed in the same manner as is directed for the trial of a major general. *Provided*, that in all cases of charges exhibited against officers, the officer ordering a court martial, shall, as soon as practicable, furnish the person charged with a copy of the charges exhibited against him; and the president of the court martial shall give him at least ten days' notice of the time and place appointed for trial, and cause such witnesses as may be required by either party to be summoned by the adjutant of the regiment in which they reside; and every person so summoned, and failing to attend, or refusing to be sworn, shall be liable to be tried by the court martial; and if he be an officer, he may be cashiered, or fined at the discretion of the court martial, not exceeding fifty dollars; if a non-commissioned officer or private, he may be fined not exceeding twenty dollars, and, moreover, be confined under guard or put in jail until he will give evidence.

SEC. 43. Each judge advocate, previous to his entering on the

duties of his appointment, shall take an oath to support the constitution of the United States and of this State, and, also, that he will well and truly perform the duties of judge advocate according to law and the best of his skill and abilities ; which oath shall be in writing, signed by the judge advocate, and attested by the officer who administers the same ; the judge advocate, thus sworn, shall administer the following oaths to the officers, previous to their entering on the duties of any court martial, viz : " You, and each of you, do solemnly swear, that you will well and truly inquire into delinquencies which may appear on the returns to be laid before you, and will assess the fines thereon as shall seem just according to law, without favor, affection, partiality, or prejudice, and that you will not disclose or discover the vote or opinion of any particular member of this court, unless required to give evidence thereof in a court of justice, so help you God ;" and no variation shall be made in the form of this oath, except as circumstances arising from different cases may require. It shall be the duty of the judge advocate to provide a book, in which he shall state the proceedings of said court, and all other necessary entries for the regiment or separate battalion, which are or shall be required by law ; and for his services he shall be exempted from military duty, and be allowed the sum of one dollar per day for attending regimental and battalion courts martial, which it shall be his duty to attend, to be paid out of the fines arising under this act. If, from any cause, the judge advocate should fail to attend a court martial, as provided in this act, it shall be the duty of the officers present to appoint a judge advocate *pro tempore* ; and in case of his death, resignation, removal out of the county or from his office, the journals and proceedings shall be kept by the colonel or commanding officer until a judge advocate shall be appointed in his room or stead.

SEC. 44. All fines and forfeitures imposed by any regimental or battalion court martial shall be collected and paid into the hands of the paymaster of the regiment or separate battalion, (whose duty it is hereby made to collect and pay over the same as aforesaid,) by a levy and sale of the goods and chattels, lands and tenements, of the individual fined as aforesaid ; and no forthcoming or delivery bond shall be taken by any adjutant, but the property seized shall be sold within twenty days after the seizure, at public auction, for the best price that may be had for the same, unless the amount of the fine, and all costs legally chargeable, shall be paid previous to the day appointed for the sale thereof ; and the adjutant shall, in all cases, give ten days' previous

public notice of the time and place of sale, and the property to be sold, the amount of fine, and by virtue of what process the same may have been seized, by at least three advertisements, set up in the most public places in the regiment or separate battalion; and he shall be entitled to the same fees which are allowed by law to sheriffs for similar services, to be paid by the delinquent; and the execution to be issued by the judge advocate shall be to the following effect, viz:

"The State of Arkansas, to the adjutant of ——, Greeting: You are hereby commanded, that, of the goods and chattels, lands and tenements, of —— ——, you cause to be made the sum of ——, which sum the said —— —— was fined at and by a (regimental or battalion court martial, as the case may be) on the —— day of ——, in the year ——; which sum you are to render to the paymaster of ——, the court martial of which imposed said fine, within thirty days after the receipt thereof. Given under my hand, this —— day of ——, one thousand eight hundred and ——.

(Signed) A. B. *Judge Advocate of* ——"

All executions shall be returned to the next regimental or battalion court martial after issuing the same; and it shall be the duty of the judge advocate to enter on the minutes of the court martial the return of the adjutant on each and every execution; and the execution to be issued for fines assessed by the company court martial shall be signed by the president thereof, and conform, as nearly as circumstances will admit of, to the above form, and shall be in like manner executed, and returned, by the officer to whom the same shall be directed, to the president of such court at the next company court martial after the date; and the officer executing the same shall have the same fees as are allowed to the adjutant; and every adjutant or other officer charged with the execution of any such process, who shall wilfully neglect to execute or return the same, or shall neglect or refuse to pay over any money collected on any such process as directed by this act, shall be fined by the next court martial of the company, battalion, or regiment, from which such process issued, in any sum not exceeding double the amount mentioned in any such process, or collected thereon, and not paid over as aforesaid, which shall be collected and paid over as other fines are by this act directed to be collected and paid; and, moreover, such officer may, in the discretion of the court martial, be cashiered and removed from his said appointment.

SEC. 45. It shall be the duty of the commanding officer of the regiment or separate battalion, to appropriate the money arising from

fines in the hands of the paymaster, by order of the court martial, in the first place, to the purchasing of drums, fifes, and colors, for the use of the regiment or separate battalion; and, secondly, to paying the officers of the regiment or separate battalion for any services for which they may be entitled to pay under the provision of this act.

SEC. 46. No officer or private, ordered or directed by this act to appear as aforesaid, shall be liable to be taken or arrested by any officer in any civil action or process whatever, on the day such person is directed to appear, or in any reasonable time going to, continuing at, or returning from the same; and every such arrest is hereby declared to be void; and every person required by this act to attend musters, going to or returning from the same, shall be suffered to pass over any bridge, together with his horse, and shall be put over any public ferry without delay, free from any charge whatever; and if any ferryman demand pay for, delay or refuse to put such person or persons over, or keeper of a toll bridge impede the passing of any person, he shall forfeit and pay, for every such offence, the sum of two dollars, to be recovered by a warrant from a justice of the peace, one half to the informer, and the other half to the use of the county where the offence was committed; and no non-commissioned officer or private shall be deprived of his arms and accoutrements required by this act, by execution or other process of law, civil or military.

SEC. 47. The field officer of each regiment or separate battalion is hereby empowered to appoint suitable persons *pro tempore*, to raise, by voluntary enlistment, for a period not exceeding five years, a company of riflemen, a company of artillery, or a troop of cavalry, in his regiment or separate battalion, which corps thus formed shall consist of not less than forty nor more than sixty privates; provided that no company, by such enlistment, shall be reduced below its lawful number; and the corps so formed is to be and remain a part of the same regiment or separate battalion in which it is raised, and be subject to the same rules, regulations and restrictions as other militia, until otherwise provided for by law; and when the requisite number are enlisted, it shall be lawful for the officer of the regiment or separate battalion to which they belong, to order an election for officers of the said companies, to be conducted as in other cases; and the companies so formed shall choose their own uniform, both the officers and privates, and shall be armed as follows: In the rifle corps, the captain and subalterns to be armed with side arms, the privates with a good rifle, a shot bag, and powder horn, with nine charges of powder and ball suit-

able to the bore of the rifle; in the company of artillery, each captain and subaltern with side arms, and the artillerists with one field piece, with its usual number of cartridges, boxes, balls, &c.; in the troop of cavalry, the officers and soldiers shall be furnished with a good horse, saddle, bridle, and martingale, and armed with a sword or cutlass, holsters and holster pistols; and the said corps shall use for instruction and exercise, the system of military discipline adopted in the United States army for troops of a similar description: *Provided however*, that nothing in the foregoing article shall be so construed as to authorize the raising of more than one volunteer company in any one regiment or separate battalion, except in cases heretofore provided for.

SEC. 48. In all cases when any person who shall be fined as provided by law, shall remove into any other county, without having complied with the sentence of the court martial, or court for the assessment of fines, it shall be the duty of the judge advocate to issue an execution, directed to the adjutant of the regiment or separate battalion to which such delinquent shall have removed; and it shall be the duty of the adjutant to whom the same shall be directed, to collect and return the same to the judge advocate who issued the same, or his successor in office, within six months after the date thereof, and to pay the amount collected thereon to the paymaster of the regiment or battalion where such delinquent was fined.

SEC. 49. The system of discipline and field exercise which is and shall be ordered to be observed by the regular army of the United States, shall be observed by the militia of this State, and the commanding officers of the several military divisions shall cause the militia within their respective commands to be disciplined and trained conformably thereto, in all things not otherwise directed by this act; and in all cases not specially provided for by this act, such provisions of law as have been or may be made by congress for the government and direction of the army or militia of the United States, in similar cases, shall be binding upon, and be observed and conformed to by the militia of this State; and the forms and rules of proceeding of all courts martial, not provided for in this act, shall be such as are established by the rules and articles of war, or adopted and used in the militia service of the United States.

SEC. 50. All fines imposed by any court martial, under the provisions of this act, on any major general, brigadier general, brigade major, colonel of a regiment, or lieutenant colonel of a separate battalion, shall be collected on an execution to be issued and signed by the

presiding officer of the court martial assessing such fine, directed to the adjutant of the regiment or separate battalion in which the officer fined may reside, by such adjutant, in like manner as other fines are by this act directed to be collected; and the residue of all fines so collected of any major general, brigadier general, or brigade major, shall be paid into the State treasury, first paying thereout the expenses of the court martial at which the same were assessed; and the residue of all fines so collected of any colonel or lieutenant colonel, after paying the expenses of the court martial at which the same were assessed, shall be paid to the paymaster of the regiment or separate battalion to which the officer fined shall belong.

SEC. 51. Each officer required to make returns by the twenty-ninth section of this act, and failing to make such return, shall, if a major general, be fined in a sum not exceeding one hundred dollars; if a brigadier general, in a sum not exceeding seventyfive dollars; if a colonel of a regiment or lieutenant colonel of a separate battalion, in a sum not exceeding thirty dollars; if a captain or commanding officer of a company, in a sum not exceeding twenty dollars, to be assessed, collected, and disbursed, in manner as by law directed in other cases.

SEC. 52. Every commissioned officer of the militia shall be furnished with one copy of this act, at the expense of the State; and every officer shall, when he goes out of office, deliver to his successor in office all books and forms furnished him by the State, or received from his predecessor in office, and also all books and papers in his possession belonging to his division, brigade, regiment, battalion, or company; and every officer who shall neglect or refuse so to do, shall be fined twenty dollars per month for every month he shall so neglect or refuse, after a demand thereof made by his successor, to be assessed by any court martial having cognizance of the conduct of such officer, and collected and accounted for as other fines imposed upon such officer are by this act directed to be collected and accounted for.

SEC. 53. If any person shall vote at any election prescribed in this act, not being qualified to vote at such election, such person shall, upon conviction thereof before a justice of the peace, forfeit and pay five dollars, to be recovered on complaint in writing made to such justice of the peace, in the name and to the use of him or them suing for the same.

SEC. 54. If any commissioned officer shall be charged with ungentlemanly conduct, either in or out of service, unbecoming the character of an officer, he shall be arrested and tried by a general,

brigade, or regimental court martial, agreeably to the rules contained in this act; and, if found guilty, shall be cashiered and enrolled as a private in the company within the bounds of which he lives.

SEC. 55. The brigadier generals, together with their respective staff officers, shall, once in two years, and oftener, if found necessary, review the several regiments and separate battalions within their respective brigades; and, for this purpose, they shall have power, and are hereby required, to issue general orders to the commanding officers of the regiments and separate battalions within their respective brigades; requiring them to cause the militia within their respective commands to assemble for parade and review, at such time and place as shall be designated in such orders; which orders shall be notified or given to the commanding officers of regiments and separate battalions at least thirty days before the day appointed for any such review; and the brigadier generals may make such regulations as shall appear to them necessary, not contrary to law.

SEC. 56. The governor shall appoint one adjutant general, who shall do and perform all the duties of adjutant general, as required of him by this act; and shall furnish all forms of returns, and keep a book in which he shall make a fair entry of all returns by him received, which shall be subject to the inspection of the major generals and commander in chief, and shall receive for his services the sum of two hundred and fifty dollars per annum, out of any money in the State treasury not otherwise appropriated.

SEC. 57. The governor shall, in addition to the staff now allowed by law, appoint one quartermaster general, and the staff of the governor shall rank as colonels of cavalry.

[Arranged from acts approved October 23, 1836, and December 15, 1837.]

CHAPTER 98.

MILLS AND MILL DAMS.

SECTION
1. Person may erect dam across any water course not navigable, when proprietor of land through which it runs at pointwhere dam to be erected.
2. Owner of land in fee simple on one side including part of bed, may do so.
SECTION
3. Wishing to erect dam under first section, to file petition if dam likely to overflow lands of another.
4. If lands will be overflowed in adjoining county, petition to be filed in circuit court of each county.

SECTION
5. *Petition*, form and requisites of.
6. ——— additional requisites of, under second section.
7. Writ of *ad quod damnum* to issue, and form of.
8. What shall be found by jury.
9. Additional finding under second section.
10. In such case notice to be served on proprietor — and how — and jury may go into adjoining county.
11. Inquest of jury how returned.
12. Persons to be damaged then to be summoned to show cause against erection of dam.
13. Such summons how served.
14. In what cases court shall not permit dam to be erected.
15. How court further to consider, and what order to make.
16. What decree, where party has prayed for ground on which to abut his dam.
17. Such order and decree, rights and privileges to be upon conditions.
18. What such conditions shall be.
19. What condition as to rebuilding and repairing.
20. Consequence of non-compliance with such latter condition.
21. Dam already built, how to be raised.
22. How far prosecutions and actions not to be barred by such proceedings, order, &c.
23. Damages for building dam, &c. without permission, what and how recovered.
24. And such dams, &c. to be deemed public nuisances and how dealt with.
25. Person failing to build, rebuild, &c. according to this act, other persons to have permission to do so.
26. The same course hereby pointed out, to be pursued where mills to be propelled by water from lakes through canals.

SEC. 1. Any person may erect a dam across any water course not being a navigable stream, if such person is the proprietor of the land through which the water course runs at the point where he proposes to erect his dam, by proceeding as in this act provided.

SEC. 2. Any person being the owner in fee simple of the land on one side of a water course, including part of the bed of such water course at the point where he proposes to erect a dam, may erect such dam by proceeding as in this act is provided.

SEC. 3. In the case supposed in the first section, the person proposing to erect a dam, if such dam shall be likely to overflow any lands on such stream belonging to other persons, shall file his petition for that purpose in the circuit court of the county in which he proposes to erect his mill or other machinery connected with the dam.

SEC. 4. If a mill or other dam be proposed to be erected near a county line, so as to overflow lands in an adjoining county, then the person proposing to erect such dam shall apply to the circuit court of both counties for the relief hereinafter provided.

SEC. 5. The petitioner shall set forth a description of the land and an abstract of the title thereto, the name of the water course, and a description of the point at which he proposes to erect his dam, the altitude of the dam which he proposes to erect thereat, the kind of mill and other machinery which he proposes to connect with the dam.

SEC. 6. In the case supposed in the second section of this act,

the person proposing to erect a dam, shall also file his petition, and in addition to the requisitions of the fifth section, shall set forth the name and place of residence of the proprietor of the land on the other side of the water course whereon he would abut his dam, and on what side of the water course he proposes to erect his mill or other machinery in connection with his dam. And the petition shall be filed in the county wherein he proposes to erect such mill or other machinery.

SEC. 7. On filing the petition it shall be the duty of the court to cause a writ of *ad quod damnum* to be issued under the seal of the court, directed to the sheriff, commanding him to summon twelve fit persons of his county to meet at the place where the mill is proposed to be erected (or the land overflowed) on a day named in the writ, then and there to inquire by said jury touching the matter contained in the petition, a copy of which shall accompany the writ.

SEC. 8. It shall be the duty of the sheriff to attend with the jury on the day and at the place appointed, and upon full examination and inquiry by such jury, they shall find, 1st, What will be the amount of damage to each proprietor by reason of inundation consequent upon the erection of the dam as proposed. 2d. Whether the mansion house of any such proprietor, or the outhouses, curtilages or gardens thereunto immediately belonging, or orchard, will be overflowed thereby. 3d. Whether, and to what extent, ordinary navigation and fish of passage will be obstructed by such erection, and whether and by what means the same may be prevented or diminished. 4th. Whether the health of the neighborhood will be materially endangered in consequence of such erection.

SEC. 9. In the case supposed in the second section, the sheriff shall further find by the jury, the value of one acre of ground on the opposite side of the water course, to include the place where the petitioner would abut his dam or build his mill or other machinery, and the sheriff shall with the assistance of the jury set the same apart by metes and bounds.

SEC. 10. In such cases the sheriff shall notify the proprietor of the land, whereof one acre is prayed for, of the time and place, when and where he will take the inquest of the jury, if such proprietor be in his county, and if not he shall set up the notice at the house of the tenant of such land, and if there be no tenant thereof, then he shall set up such notice at some conspicuous place on the land. In discharging the foregoing duties the sheriff shall have power with the jury to go into and act in an adjoining county, when necessary.

SEC. 11. The inquest of the jury shall be reduced to writing, and

being signed by each of the jurymen, shall be returned by the sheriff together with the writ, and a statement of the manner in which he executed it, into the court whence it issued, without delay.

SEC. 12. The court shall on the return of the inquest cause the proprietor of the land, one acre whereof shall have been prayed for, and the several persons proprietors of land found by the inquest returned to be liable to damage, to be summoned to appear in the same court on a day to be named in the summons, and show cause, if any they can, why the person petitioning should not have permission to erect his dam.

SEC. 13. If such proprietor reside in the county in which the lands lie, the service of the summons shall be as in ordinary cases: but if not a resident in the county, then the service shall be by setting up a copy at the house of the tenant on the land, or if there be no tenant there, at some conspicuous place on the land.

SEC. 14. If upon a view of the inquest returned by the sheriff, and other evidence, if any such shall be produced, it shall appear to the court that the mansion house of the proprietor, or the outhouses, curtilages or gardens thereunto belonging, or orchard, or field will be overflowed, or that the health of the neighborhood will be materially annoyed by the stagnation of the waters consequent upon the erection of the proposed dam, the court shall not permit such dam to be erected.

SEC. 15. If upon view it shall appear to the court that none of the evils provided against in the last preceding section are likely to ensue, the court shall then consider whether, all circumstances weighed, it is reasonable that the permission to erect the dam as prayed for, should be given, and thereupon make an order, giving permission or not accordingly.

SEC. 16. Where the party petitioning shall have prayed for one acre of ground whereupon to abut his dam, the court shall include in their order granting permission to erect the dam, a decree vesting such acre of land and the title thereof in the party petitioning, his heirs and assigns forever.

SEC. 17. The order and decree authorized by the two last preceding sections, and the rights and privileges thereby granted, shall in all cases, be upon and subject to the conditions hereinafter expressed.

SEC. 18. First, such conditions in reference to the obstructions of fish of passage, as the court shall think proper to impose: Second, that all damages and valuations made and assessed by the jury, shall be paid: Third, that the dam and mills or other machinery shall be commenced within one year, and the same shall be finished and ready for business in three years from the date of the order of permission.

SEC. 19. That whenever the dam and mill or other machinery shall be destroyed or materially impaired, the same shall be rebuilt or repaired within three years thereafter, but if the owner of such dam and mill be an infant, then the usual saving in favor of infants.

SEC. 20. In case of non-compliance with any of the conditions concerning building, rebuilding or repairing, where the land of another shall have been decreed by the court for the purpose of an abutment, the same shall revert to and revest in the original owner or his legal representatives.

SEC. 21. Any owner of any dam and mill, or other machinery erected in virtue of this act, may raise his dam by permission of the court, under and by the same proceedings, regulations and conditions, herein before provided.

SEC. 22. The inquest of the jury or the order and permission of the court founded thereupon, shall not bar any prosecution or action, which any person would have had in law, had this act not been passed; except for such injuries as were actually foreseen and estimated by the jury.

SEC. 23. Any person who shall build or raise any dam or any other stoppage or obstruction in or across any water course, without first obtaining permission from the proper court, according to law, and shall thereby work any material injury to any other person by overflowing his lands, shall forfeit to the party injured double damages for such injury, to be recovered by action on the case.

SEC. 24. All dams, stoppages or obstructions not made according to law, shall be deemed to be public nuisances, and shall be dealt with accordingly.

SEC. 25. If any person or his legal representatives, to whom permission to erect a dam in virtue of this act shall have been given, shall fail to build, rebuild or repair the same, together with the mill or other machinery connected therewith, according to the requisitions of this act, or the conditions of the permission, it shall be lawful for any other person owning the land on one side of the water course at the point where such dam was erected or was intended to be erected, or owning the land below or above, to build a dam and mill or other machinery thereon, as if no such permission had been given, without incurring any liability on account of taking off or backing the water on such dam.

SEC. 26. Where mills or other machinery are proposed to be built, so as to be propelled by water drawn from lakes through canals cut therefrom, if the canal intended to be cut will pass through the land of other persons, the same mode shall be pursued as in cases of streams.

[Approved: February 20, 1838.]

CHAPTER 99.

MILLS AND MILLERS.

SECTION
1. All grist mills that grind for toll, public.
2. On any water course, by order of statute or court, public.
3. Grain &c. to be ground in turn.
4. Rates of toll.
5. Bolting machine turned by hand, miller only bound to permit customer to use it.
6. Owner or occupier accountable for grain, bags, casks, &c.
7. Not liable for loss without his fault or neglect, nor by unavoidable accident, nor for bags, &c. not marked with owner's name.
8. To give due attendance, and assistance, &c.
9. To keep certain measures and dishes.
10. Penalty for breach of this act.

SEC. 1. All grist mills which grind for toll in this State, are hereby declared public mills.

SEC. 2. Every water grist mill that may be built and established on any water course by order of any statute, or lawful order of any court, shall be deemed a public mill and shall grind for customers at least one half its time.

SEC. 3. All grain brought to a public mill, shall be ground in turn as the same shall be brought, and shall be ground as well as the nature and condition of the mill will permit; but nothing in this section shall be so construed as to prevent the owner of any mill from grinding his own grain at any time.

SEC. 4. The owner or occupier of any public mill shall be entitled to toll all grain ground thereat according to the following rates: first, if a water or steam mill, the one eighth part and no more; second, if a horse mill, the one fourth part when the owner or occupier of such mill finds the team for grinding the same, and when the team shall be furnished by the owner of the grain and with the consent of the owner of the mill, the toll shall be the same as is allowed to the owner or occupier of a water mill and no more.

SEC. 5. When the bolting machine of any mill shall be so constructed as to require it to be turned by hand, the owner or occupier of the mill shall only be bound to permit the owner of the grain to use the same.

SEC. 6. The owner or occupier of a public mill, shall be accountable for the safe keeping of all grain received for the purpose of being ground, and shall, when called for, deliver the flour or meal made

therefrom, together with the bags or casks in which the same was received, to the owner, or the agent or servant of such owner.

SEC. 7. The preceding section shall not be so construed as to charge the owner or occupier of any public mill, or make him liable for the loss of any grain, bags, or casks when such loss shall happen without the fault or neglect of the owner or occupier, or by unavoidable accident; and no such owner or occupier of a mill shall pay for any bags or casks that are not marked with the owner's name.

SEC. 8. The owner or occupier of a public mill shall, when the mill is in repair and fit for business, give due attendance to his customers, and assist in loading and unloading all grain which shall be brought by them for the purpose of being ground, and the material which shall be made therefrom.

SEC. 9. There shall always be kept in a public mill by the owner or occupier thereof an accurate half bushel measure, and an accurate set of toll dishes.

SEC. 10. For each breach of any of the provisions of this act by the owner or occupier of a public mill, he shall forfeit and pay to the party aggrieved by such breach, ten dollars, to be recovered by action of debt with costs, before any justice of the peace.

[Approved: November 25, 1837.]

CHAPTER 100.

MONEY.

SECTION
1. Accounts and computations to be kept in money account of the United States.
2. In judgments, decrees and executions, the amount to be so computed and expressed, but fractions lower than cents to be omitted.

SEC. 1. All accounts and other computations of money in the treasury and other public ffioces whether State or local, and all accounts arising from proceedings in courts of justice, shall be kept and made out in the money account of the United States—that is to say, in dollars or units, dimes or tenths, cents or hundredths, mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

SEC. 2. In all judgments or decrees rendered by any court of justice for any debt, damages or costs, and on all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions; and no judgment or other proceeding shall be considered erroneous for such omission.

[Approved: November 27, 1837.]

CHAPTER 101.

MORTGAGES.

SECTION
1. To be acknowledged and recorded.
2. To be a lien from time of record, and filing for record to be notice.
3. Time of filing to be endorsed and entered.
4. Petition for foreclosure.
5. Where filed and suit commenced.
6. Summons thereon, and service and return.
7. Copy of petition to accompany each summons.
8. Alias summons or publication, when not found.
9. Defendants whose names unknown, how sued.
10. Persons claiming interest, how made defendants, and proceedings thereon.
11. Judgment by default, when taken.
12. Trial, when to be had.
13. Judgment and order of foreclosure.
14. *Fi. fa.* thereon, form of.
15. Proceedings thereunder.
16. *Fi. fa.* to what county directed.
17. Execution for balance not made by sale.
18. Satisfaction of, how acknowledged.
19. Penalty for not acknowledging.
20. Effect of such acknowledgment.
21. Proceedings and certificate of officer, when mortgaged property redeemed before day of sale.

SEC. 1. All mortgages, whether for real or personal estate, shall be acknowledged before some person authorized by law to take the acknowledgment of deeds, and shall be recorded, if for lands, in the county or counties in which the lands lie; and if for personal property, in the county in which the mortgagor resides.

SEC. 2. Every mortgage, whether for real or personal property, shall be a lien on the mortgaged property from the time the same is filed in the recorder's office for record, and not before; which filing shall be notice to all persons of the existence of such mortgage.

SEC. 3. It shall be the duty of the recorder to endorse on every mortgage filed in his office for record, and note in the record, the precise time such mortgage was filed for record.

SEC. 4. All mortgagees of real estate, and mortgagees of personal estate when the debt secured amounts to fifty dollars or upwards, may file a petition in the office of the clerk of the circuit court, against the mortgagor and the actual occupiers of such real estate, if any, setting forth the substance of the mortgage deed, and praying that judgment may be rendered for the debt, and that the equity of redemption may be foreclosed, and that the mortgaged property may be sold to satisfy the amount due.

SEC. 5. If any part of the property be real estate, the petition may be filed in any county where any part of the mortgaged premises are situated; but if it be exclusively for personal property, it may be filed, and proceedings commenced as in personal actions.

SEC. 6. The clerk of the circuit court shall issue a summons commanding the defendant to appear, and answer such petition at the return day thereof; and if there be two or more defendants, and they reside in different counties, a separate summons shall be directed to each county, including all the defendants therein, and the service and return of such summons shall be made as in actions at law.

SEC. 7. A copy of the petition shall accompany each separate summons.

SEC. 8. If a return be made of such summons, that any defendant cannot be found, an alias summons may be issued to the same or any other county, or publication may be made, and proceedings therein had, as in similar cases in courts of chancery.

SEC. 9. Defendants whose names are unknown, may be sued, and orders of publication may be made, as in suits in chancery.

SEC. 10. Any person claiming an interest in the mortgaged property, may be made defendant to any such proceedings, on motion, and may plead any lawful plea in avoidance or bar of the deed or debt, and an issue shall be made and tried as in actions at law.

SEC. 11. If any person summoned or notified, as aforesaid, thirty days previous to the return of such summons, do not appear, and answer such petition at the time required, judgment shall be rendered by default, and proceedings had thereon as in actions at law.

SEC. 12. All cases under the provisions of this act, shall be tried at the term of the court to which the summons is made returnable, if such summons shall have been served thirty days previous to the return day thereof, unless for good cause shown.

SEC. 13. If, upon trial, it be found that any part of the mortgage money is unpaid, and that the petitioner is entitled to recover the same,

the court shall render judgment for the debt, interest, and costs, and shall make an order that the mortgaged property be sold, describing the same as in the mortgage, or so much thereof as is sufficient to satisfy the amount found due, with interest thereon until paid.

SEC. 14. Upon such order, a special writ of *fieri facias* shall be issued, directed to the sheriff, referring to the order of sale, and commanding the sheriff that of the real and personal estate in such order specified, he cause to be levied the debt, damages, and costs, together with interest thereon from the date of the judgment, which shall be specially stated in the writ, and that he have the money at the return day of such writ.

SEC. 15. Such writs shall be returnable as other executions; and the advertisement, sale and conveyance, of real and personal estate, under the same, shall be made as under other executions.

SEC. 16. If such mortgage be for real estate, such writ of *fieri facias* shall be directed to the county in which the same is situate; and if it be for personal property, it may be directed to any county.

SEC. 17. If the whole of the mortgaged property does not sell for a sum sufficient to satisfy the amount due, an execution may be issued against the defendant, as on ordinary judgments.

SEC. 18. If any mortgagee, his executor, administrator, or assignee, shall receive full satisfaction for the amount due on any mortgage, he shall, at the request of the person making satisfaction, acknowledge satisfaction thereof, on the margin of the record in which such mortgage is recorded.

SEC. 19. If any person thus receiving satisfaction, do not, within sixty days after being requested, acknowledge satisfaction as aforesaid, he shall forfeit to the party aggrieved, any sum not exceeding the amount of the mortgage money, to be recovered by action of debt, in any court of competent jurisdiction.

SEC. 20. Such acknowledgment of satisfaction, made as aforesaid, shall have the effect to release the mortgage, and bar all actions brought thereon, and revest in the mortgagor, or his legal representatives, all title to the mortgaged property.

SEC. 21. If such mortgaged property be redeemed by payment to the officer before the sale, such officer shall make a certificate thereof, and acknowledge the same before some officer authorized to take the acknowledgment of deeds for lands, and such certificate shall be recorded in the office in which the mortgage is recorded, and shall have the same effect as satisfaction entered on the margin of the record.

[Approved: February 20, 1838.]

CHAPTER 102.

NE EXEAT.

SECTION
1. Writs of, by whom granted.
2. Bill and affidavit necessary.
3. Officer granting, to endorse in what sum bond is required.
4. Bond to be taken and approved.
5. Condition thereof.
6. Defendant may bring suit on such bond.
7. Writ, when returnable, and order for issuing, how endorsed.
8. To be accompanied by the bill and a summons.
9. Defendant to give bond or be committed.
10. Temporary departure no breach of bond.
11. Security may surrender defendant, how.
12. When granted where time of payment or performance not arrived.

SECTION
13. When for equitable cause of action.
14. When to co-obligor or debtor.
15. When to security or co-security.
16. Writs of, when returnable.
17. Defendant may move to dissolve.
18. Issues, how made up and tried.
19. Costs, when adjudged to complainant.
20. When court may try the merits at law.
21. When in chancery.
22. When debt not due, or time of performance not arrived, how court may continue.
23. Defendant performing contract, to have judgment.
24. When writ dismissed on answer.

SEC. 1. The supreme and circuit courts, or any judge thereof in vacation, or the master in chancery in each court, shall have power to grant writs of ne exeat.

SEC. 2. No writ of ne exeat shall be granted untill a bill shall be filed, supported by the affidavit of the complainant, or some other creditable person.

SEC. 3. The court, judge or master that may grant any writ of ne exeat, shall endorse on the bill in what penalty bond and security shall be required of the defendant.

SEC. 4. Before such writ is issued, the clerk of the circuit court shall take from the complainant to the defendant, a bond in such sum, and in such security, as may be approved by the court, judge or master granting the writ, which approval shall be endorsed on the bill.

SEC. 5. Such bond shall be conditioned that the complainant will prosecute his bill with effect and reimburse to the defendant all damages and costs which he shall sustain by the writ.

SEC. 6. Any defendant in a writ of ne exeat may bring suit on such bond, and if it appear that the writ was prayed for without just cause, he shall recover damages, as on other penal bonds.

SEC. 7. All writs of ne exeat shall be returnable to the circuit court of the proper county, and when issued in vacation by a judge or

by the master in chancery, an order shall be endorsed on the bill to the clerk, directing him to issue the writ, and take bond as required by this act.

SEC. 8. Every writ of ne exeat shall be accompanied by the bill on which it is founded and a summons for the defendant to appear and answer the complainant's bill.

SEC. 9. Where the defendant shall be served with a writ of ne exeat, he shall give bond to the complainant with security in the sum endorsed on the bill, conditioned that he will not depart from the State without leave of the court, and that he will render himself in execution to answer any judgment or decree that may be rendered against him; and on failure to give such bond he shall be committed to jail.

SEC. 10. No temporary departure of the defendant from the State shall be a breach of the bond, if he return before his personal appearance shall be necessary to answer or perform any judgment, order or decree of the court.

SEC. 11. The security for the defendant may surrender him at any time before the bond shall be forfeited, in the same manner that bail may surrender their principal and obtain a discharge in other cases.

SEC. 12. Writs of ne exeat may be granted where there are contracts for the payment of money or property, or covenants to be performed, and the time for payment or performance has not arrived; and the person in whose favor the contract or covenant may be shall set forth in his bill that he has just cause of demand against the defendant, and fully setting forth the facts and circumstances of the case, and that he has reason to believe that the defendant is about to leave the State without the intention of returning to reside therein, that the obligation is not due, that at the time of entering into the contract or covenant, he did not know that the defendant intended to remove out of the State, and that he has failed to satisfy the demand.

SEC. 13. Whenever any complainant shall set forth in his bill that he has an equitable cause of action against the defendant named in the bill, and that a remedy at law cannot be afforded him, and that the defendant is about to leave the State and remove his effects, without any intention of returning, and that he has failed to make satisfaction for the same, a writ of ne exeat may be granted to stay the defendant in the State until he makes satisfaction, or the matter is determined, notwithstanding the cause of action may have accrued previous to the application for such writ.

SEC. 14. In the case of joint, or joint and several obligors, or

debtors, if one or more of them is about to remove out of the State, leaving one or more co-obligors or debtors bound with him for the payment of any sum of money, or for the delivery of any property, or for the conveyance of any lands, at a certain time, which shall not have arrived at the time of such intended removal, the co-obligor or debtor who remains, shall be entitled on application to a writ of ne exeat to compel his co-obligor or debtor to secure the payment of his part of the sum to be paid, or of the delivery of the property, or to convey or join in the conveyance of the land.

SEC. 15. A writ of ne exeat may issue on the application of a security to prevent the removal of the principal or co-security out of the State, until satisfaction shall be made, in cases where the obligation or debt shall not be due.

SEC. 16. All writs of ne exeat shall be returned to the next term of the circuit court after their date.

SEC. 17. On the return of any writ of ne exeat, the defendant may move to dissolve the writ on account of its being improperly obtained, or for other good causes.

SEC. 18. The court shall have power to empanel a jury to try any issue of fact that may arise, and particularly the issue in relation to the truth of the allegations in the bill, and the parties shall plead and join issue, at the term of the court to which such writ is returnable, and the cause shall be disposed of as other causes.

SEC. 19. If the facts of the bill be found for the complainant, he shall have his costs.

SEC. 20. If the money be due, or the time has arrived at which the contract is to be performed, at the return of the writ, the court shall try the merits thereof, without regard to the formal pleadings, as in other suits at law, and pronounce judgment thereon.

SEC. 21. If the subject matter of the bill be solely the object of chancery jurisdiction, the court shall proceed to the final determination of the matter, as in other suits in chancery.

SEC. 22. If the debt be not due, or the time for the performance of the contract shall not have arrived, the court shall determine whether the proceedings are in accordance with the provisions of this act, and if so, the cause shall be continued until the time when the contract is to be performed, after which the court shall dispose of the cause, as in other cases.

SEC. 23. If after the time when the contract was to have been performed, the defendant show that the contract has been performed, judgment shall be rendered in his favor.

SEC. 24. If the defendant shall file his answer with the judge granting the writ in vacation or in the court in term time, denying on oath his intention to remove from the State, and shall otherwise satisfy the judge or court of his intention and ability to satisfy and pay the debt when due, or comply with the contract at the time specified for its performance, the court or judge may dismiss the writ, and the party shall be discharged without security.

[Approved: March 5, 1838.]

CHAPTER 103.

NEGROES AND MULATTOES.

SECTION
1. Who to be deemed mulattoes.
2. Certificate and bond required of free negro or mulatto settling in this State.
3. Clerk, on filing such bond, to give certificate, and his fees therefor.
4. Penalty for harboring negro or mulatto who has not obtained such certificate.
5. Duty of officers to apprehend such negro or mulatto.
6. Justice of peace to issue warrant for.
7. Proceedings of justice thereon.
8. Judgment of, and punishment of negro or mulatto not having certificate.
9. Not complying with such judgment, what judgment rendered and punishment inflicted by county court.
10. Time allowed such negro or mulatto to leave the State.
11. What free negroes or mulattoes not within these provisions.
12. Penalty of person bringing free negroes into the State without certificate.
13. To what persons not to apply.
14. Minors to be bound out by county court.
15. Proceedings therefor, rights, &c. of master and apprentice.
16. Register of such binding to be kept.
17. Free negroes, &c. not to keep arms or ammunition without leave.
18. Such weapon or ammunition forfeited, and punishment therefor.

SEC. 1. Every person, except a negro, whose grandfather or grandmother shall have been a negro, although all his progenitors, except those descending from the negro, shall have been white persons, shall be deemed a mulatto; and every person, not a full negro, who shall be one fourth or more negro, shall also be deemed a mulatto.

SEC. 2. No free negro or mulatto shall hereafter be permitted to emigrate to or settle in this State unless he shall produce to the clerk of the county court of the county in which he wishes to settle, within twenty days after his arrival therein, a certificate of his freedom, and

enter into bond to the State of Arkansas for the use of any county that may be damnified by such negro or mulatto, with good and sufficient security in any sum not less than five hundred dollars, before the clerk of the county court, conditioned for the good behavior of such negro or mulatto and to pay for the support of such negro or mulatto in case he shall at any time thereafter be unable to support himself and become chargeable to any county of this State.

SEC. 3. The clerk of the county court taking and approving such bond, shall file the same in his office, and thereupon issue a certificate under his hand and the seal of his office that such negro or mulatto has filed bond in accordance with the provisions of this act and produced satisfactory evidence of his freedom, for which service he shall be entitled to receive one dollar.

SEC. 4. If any resident of this State shall employ, harbor, or conceal, any negro or mulatto acting as a freeman, who shall not have complied with the provisions of this act and produced a certificate in accordance with the provisions thereof, every person so offending shall forfeit and pay for every such offence any sum not exceeding five hundred dollars, to be recovered by indictment for the use of the county in which such person may reside, and such person shall moreover be liable for the maintenance and support of such negro or mulatto if he should become a county charge.

SEC. 5. It shall be the duty of every sheriff, coroner and constable, when he shall know or have cause to believe, that there is in his county any negro or mulatto acting as a free person, who has not complied with the provisions of this act, to apprehend such negro or mulatto and take him before some justice of the peace of his county, to be dealt with according to law.

SEC. 6. Whenever any justice of the peace shall receive satisfactory information that any negro or mulatto not entitled to reside in this State is in his county, he shall forthwith issue his warrant to the constable to apprehend and bring such negro or mulatto before him.

SEC. 7. Whenever any negro or mulatto shall be brought before any justice of the peace in accordance with the provisions of this act, such justice shall commit such negro or mulatto to jail, to be dealt with as a runaway slave, unless he shall satisfy such justice that he is entitled to his freedom.

SEC. 8. If any negro or mulatto taken before a justice of the peace under the provisions of this act shall on examination appear to be a free person, and shall not produce a certificate of his having entered into

bond and security as required by this act, the justice shall adjudge him to pay a fine of not less than ten nor more than one hundred dollars, and stand committed until the fine shall be paid, or he be otherwise discharged according to law, and immediately to depart the State.

SEC. 9. When any negro or mulatto, committed under the provisions of the preceding section, shall not have complied with the judgment of the justice of the peace before the next term of the county court thereafter, and if he shall not then establish his right to reside in this State, the court in its discretion may order him any number of lashes not exceeding twentyfive, and immediately to depart the State, or may order the sheriff to hire out such negro or mulatto for such time as shall be sufficient to raise from the hire, the fine, costs and expenses of imprisonment.

SEC. 10. Every free negro or mulatto not entitled to reside within this State, shall be allowed three days, and one day additional for every twenty miles he must necessarily travel, to depart the State, after any order to depart, or discharge from arrest or service ; and if he remain longer in the State, he shall be proceeded against as in the first instance.

SEC. 11. The preceding provisions of this act shall not be construed to extend to any negro or mulatto employed on board of any steamboat, or as a wagoner or messenger, or as the servant of a traveller, while in the actual employment of a person not resident of this State, so that such negro or mulatto does not remain in the State more than three months.

SEC. 12. If any person shall bring into this State any negro or mulatto, acting as a free person, not having a lawful certificate of his freedom, such person shall forfeit for every such offence the sum of one hundred dollars, to be recovered by indictment, for the use of the county.

SEC. 13. The provisions of the preceding section shall not extend to the master of any steamboat who shall bring into this State any negro or mulatto, acting as a free person, employed on board of his boat, and who shall continue during his stay to be employed on such boat, and depart therewith, nor to any person travelling through this State, having any such negro or mulatto with him as a servant, and who shall during the whole of his stay in the State, remain in his service, and depart the State with him ; but no such negro or mulatto shall be permitted to remain in this State for a longer period than six months.

SEC. 14. The several county courts of this State are authorized and required to cause to be brought before them all free negroes and mulattoes, between the ages of seven and twentyone years, found within their respective counties, and bind them out apprentices or servants until they arrive at the age of twentyone years.

SEC. 15. The court shall proceed in the same manner as is directed by law for binding out minors chargeable to the county, and the apprentice or servant so bound and his master, shall be subject to the same control, obligations, and responsibilities, and shall have the same rights and remedies in all respects as are or shall be declared by law in cases of bound apprentices.

SEC. 16. Each clerk of the county court shall keep a register of all such bound negro and mulatto apprentices and servants, and enter therein the name, age, and personal appearance of such apprentices and servants, the name, residence, and occupation of the master, and the date of the binding, which register shall be open to the inspection of all persons.

SEC. 17. No free negro shall be suffered to keep or carry any gun or rifle, or weapon of any kind, or any ammunition without a license first had and obtained, for that purpose, from some justice of the peace of the county in which such free negro or mulatto resides, and such license may be granted and revoked by any justice of the peace of the county.

SEC. 18. Every gun, rifle, or weapon of any kind, or ammunition, found in the possession or custody of any free negro or mulatto, not having a license as required by the preceding section, may be seized by any person, and upon due proof thereof made before some justice of the peace of the county in which such seizure was made, shall by order of such justice be forfeited to the use of the person making the seizure, and such justice shall also impose a fine on such negro or mulatto, for the use of the county, not exceeding twenty dollars.

[Approved: February 26, 1838.]

CHAPTER 104.

NOTARIES PUBLIC.

SECTION
1. How appointed, and term of service.
2. Vacancies, how filled.
3. Power to administer oaths.
4. Other powers.
5. To keep a record, and certify copies.
6. If any die, &c., his record and papers to be delivered to the clerk.
7. To have a seal.
8. Faith given to acts done before them, and copies of their records.
9. This act to apply to notaries heretofore appointed.

SEC. 1. The governor shall, by and with the advice and consent of the senate, at the next regular session of the General Assembly, and every two years thereafter, appoint one notary public in each county, who shall hold his office for the term of two years and until his successor shall be qualified.

SEC. 2. If a vacancy shall occur in the office of notary public, during the recess of the senate, the governor shall fill such vacancy by appointment.

SEC. 3. Each notary public shall have power to administer oaths in all matters incident to, or belonging to the exercise of his notarial office.

SEC. 4. He may take the proof or the acknowledgment of all instruments of writing relating to commerce and navigation, receive and authenticate acknowledgments of deeds, letters of attorney, and other instruments of writing, make declarations and protests, and certify under his official seal the truth of all matters and things done by virtue of his office.

SEC. 5. Each notary shall keep a fair record of all his official acts in a book to be by him kept for that purpose, and when required, shall give a certified copy of any record in his office, to any person applying therefor, on the payment of the fees thereon.

SEC. 6. If any notary die, resign or remove from the county, or be removed from office, his record book and all his public papers shall be delivered to the clerk of the county court, to be delivered to his successor.

SEC. 7. Every notary shall provide a seal of his office which shall

be engraved so as to present by its impression, such emblems and devices as he may deem proper, surrounded by the words "*Notary Public: County of —— Ark.:*" and he shall authenticate all his official acts therewith, and until an official seal shall be procured, each notary may use his private seal, which shall be of the same force and effect as a public seal.

SEC. 8. All declarations and protests made, and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated in all the courts of this State.

SEC. 9. The provisions of this act shall apply to all notaries heretofore appointed.

[Approved: November 23, 1837.]

CHAPTER 105.

OATHS AND AFFIRMATIONS.

SECTION
1. Oath to be by laying hand on and kissing the gospels.
2. Persons may be permitted to swear with uplifted hand, and form of oath.
3. What persons may affirm; and form of.
4. Other mode of swearing may be also adopted, if the person to be sworn considers it more solemn and obligatory.
5. Persons believing in a different religion may be sworn according to its peculiar ceremonies, if any.

SECTION
6. Every person believing in the existence of a God may be sworn.
7. No person shall be called upon to declare his belief or disbelief, but it shall be proven.
8. Not to preclude examination of infants or persons of weak intellect to ascertain their capacity, &c.
9. Who shall have power to administer oaths, and in what cases.
10. Any person swearing, &c., falsely, in any of the forms prescribed or allowed, to be guilty of perjury.

SEC. 1. The usual mode of administering oaths now practised by the person who swears, laying his hand on and kissing the gospels, shall be observed in all cases in which an oath is or may be required by law to be administered, except in the cases herein otherwise provided.

SEC. 2. Every person who shall desire it, shall be permitted to swear with an uplifted hand in the following form: "You do solemnly swear," &c.

SEC. 3. Every person who shall declare that he has conscientious scruples against taking an oath or swearing in any form, shall be permitted to make his solemn declaration or affirmation in the following form: "You do solemnly and truly declare and affirm."

SEC. 4. Whenever the court or magistrate, by whom any person is about to be sworn, shall be satisfied that such person has any peculiar mode of swearing connected with or in addition to either of the forms in this act mentioned, which is more solemn and obligatory in the opinion of such person, the court or magistrate may adopt such mode of swearing.

SEC. 5. Every person believing in any other than the christian religion, shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies, instead of any of the modes heretofore prescribed.

SEC. 6. Every person believing in the existence of a God, shall be admitted to be sworn, if otherwise competent.

SEC. 7. No person shall be required to declare his belief in the existence of a God, or his belief or disbelief of any other matter as requisite to his admission to be sworn as a witness or otherwise, but the belief or unbelief of any person offered to be sworn as a witness may be proved by other competent testimony.

SEC. 8. The preceding section shall not be construed to prevent any court or magistrate before whom an infant, or a person apparently of a weak intellect, shall be produced as a witness, from examining such person to ascertain his capacity and the extent of his religious or other knowledge, nor to prevent the court or magistrate from inquiring what are the peculiar ceremonies observed by him in swearing, which he deems obligatory.

SEC. 9. Every court and judge, justice and clerk thereof, and all justices of the peace, shall respectively have power to administer oaths and affirmations to witnesses and others concerning any thing or proceeding depending before them respectively, and to take affidavits within their respective circuits and counties.

SEC. 10. In all cases in which an oath is required or authorized by law, the same may be taken in any of the forms in this act prescribed, in the several cases herein before specified, and every person swearing, affirming or declaring in any such form, or any form authorized by law, shall be deemed to have been lawfully sworn, and to be guilty of perjury for corruptly and falsely swearing, affirming, or declaring,

in the same manner as if he had sworn by laying his hand on the gospels and kissing them.

[Approved: December 7, 1837.]

CHAPTER 106.

OFFICIAL OATHS.

SECTION
1. Before whom to be taken.
2. Form of oath.
3. Additional oath required.
4. Oath to be endorsed on commission.

SEC. 1. The governor shall take the oath of office before one of the judges of the supreme or circuit court; and the judges of the supreme court and judges of the circuit courts, secretary of state, state treasurer and auditor of public accounts, before the governor or either of the judges of the supreme or circuit courts; and all other officers, both civil and military, before any judge or justice of the peace of this State.

SEC. 2. All officers of this State, both civil and military, before entering on the duties of their respective offices, shall take an oath to support the constitution of the United States and of this State, and faithfully to discharge the duties of their respective offices.

SEC. 3. In addition to the oath of office required in the preceding section, each civil and military officer shall, before he enters on the duties of his office, take an oath that he has not, either directly or indirectly, been engaged or in any manner concerned in any duel, or given or been the bearer of any challenge to fight a duel in this State, since the first day of January one thousand eight hundred and thirty eight.

SEC. 4. It shall be the duty of every officer administering the oath of office required by this act, to any officer of this State, to endorse such oath on the commission of such officer.

[Approved: November 30, 1837.]

CHAPTER 107.

PARTITION.

SECTION
1. Petition for, by whom and where filed.
2. Form and requisites of petitions.
3. Who shall be made parties.
4. How where parties or interest unknown.
5. How served.
6. How notice to be directed.
7. Publication, when made and how.
8. After service or publication, court to proceed.
9. Persons may appear and become parties.
10. Pleadings to such petition.
11. Further pleadings, to issue.
12. Proceedings to be like proceedings at law.
13. Consequences of defendant not appearing.
14. Judgment to be rendered.
15. Court may sit, by consent, as a jury.
16. *Commissioners* appointed, and rule and order therefor.
17. To make partition, or report their reason for not doing so, under oath.
18. Partition, how to be made.
19. Commissioners to report under oath.
20. Report, when set aside, and new commissioners appointed.
21. Confirmation of report.
22. Copy of report and judgment to be recorded.

SECTION
23. When commissioners may be directed to sell.
24. Requisites of order of sale.
25. Notice of sale to be given.
26. Sale how made.
27. Commissioners and guardians not to purchase.
28. Report of sale by commissioners.
29. If report confirmed, court to order conveyances to be made.
30. Conveyances so made to be acknowledged or proven and recorded, and effect of.
31. Proceeds of sale, how disposed of.
32. Shares of persons absent or not known to be deposited in bank.
33. Joint tenants and tenants in common to have the same proceedings for partition.
34. Partition or sale not to be made contrary to will of testator.
35. Power of guardians as to partition.
36. Circuit court to appoint guardian *ad litem* for purposes of this act.
37. Bond required of such guardian.
38. Vacancy among commissioners, how filled.
39. Compensation of commissioners.
40. Appeal and writ of error allowed.

SEC. 1. Where any lands, tenements, or hereditaments shall be held in joint tenancy, tenancy in common, or co-parcenary, whether such right or title be derived by purchase, devise or descent, or whether any, all, or a part, of such claimants, be of full age, or minors, it shall be lawful for any one or more of the persons interested by themselves, if of full age, or by their guardian, if minors, to present to the circuit court of the county where such lands or tenements lie, (or, where the lands lie in different counties, to the circuit court of either or all such counties,) their petition praying for a division and partition of such premises, according to the respective rights of the parties interest-

ed therein, and for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners.

SEC. 2. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth and make exhibits of the rights and titles of all parties interested therein so far as the same are known to the petitioner, including tenants for years, for life, by courtesy, or in dower, and of persons entitled to the reversion, remainder or inheritance, and of every person who upon any contingency, may be or become entitled to any beneficial interest in the premises; and such petition shall be verified by affidavit.

SEC. 3. Every person having such interest as is specified in this act, whether in possession or otherwise, and every person, entitled to dower in such premises, if the same has not been admeasured, shall be made a party to such petition.

SEC. 4. In cases where one or more of such parties, or the share or quantity of interest of any of the parties, is unknown to the petitioner, or uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties cannot be named, the same shall be so stated in the petition.

SEC. 5. A copy of such petition, with notice that the same will be presented to the circuit court of the county in which such lands or tenements are situate, on some certain day of the term, or as soon thereafter as a hearing can be had, shall be served four weeks previous to such term, on all the parties interested in the lands or tenements, who shall not have joined in the petition, and on the guardians of such as are minors, or of unsound mind.

SEC. 6. The notice of such application shall be directed to all the parties by name, whose names are known, whether their interests are known or certain, contingent or unknown, and, generally, to all others unknown, having any interest in such premises.

SEC. 7. If any of the parties having such interest unknown, or if any of the known parties, reside out of the State, or cannot be found therein, and such facts be made to appear to the court by affidavit, a notice of the application, describing the premises, and of the object of the petition, shall be published once a week for four weeks successively, in some newspaper printed in this State, or instead thereof, as to any known absent parties, the petition and notice may be served on them personally out of this State; and, in either case, such notice shall be deemed sufficient.

SEC. 8. Upon the presentation of such petition, and satisfactory proof being made of the service thereof, with notice, or the publication thereof, as required by this act, the court shall proceed therein as hereinafter directed.

SEC. 9. Any person having an interest in the premises sought to to be divided or sold, whether such interest be present or future, vested or contingent, though not made a party in the petition, may appear, and, on showing his interest by affidavit, to the satisfaction of the court, be made a party to such suit for partition.

SEC. 10. Any party appearing may, within the time prescribed for pleading in actions at law, or within such time as the court may allow for that purpose, plead, either separately, or jointly with one or more co-defendants, any special matter as a defence, or that the defendants, or any of them, did not hold the premises together with the petitioners, at the time of the commencement of the proceedings, as alleged in the petition; and under such last mentioned plea, the defendant pleading it may give notice of any matter to sustain such plea, and may give evidence thereof on the trial, as if the same had been specially pleaded.

SEC. 11. Replications and further pleading may be had between the parties, respectively, according to the practice of the court in actions at law, until an issue or issues of law or fact be joined between the parties, or some of them.

SEC. 12. All issues shall be joined, and the like proceedings for the trial thereof shall be had, and bills of exceptions may be taken, new trials granted, and pleadings amended, in the same manner, as in actions at law.

SEC. 13. If any of the parties duly notified by personal service or publication, in accordance with the provisions of this act, shall not appear and plead within the time allowed by the court for that purpose, the default shall be entered, but the petitioners shall nevertheless make out their case by the exhibition to the court of the evidence of their title upon which they claim.

SEC. 14. The court shall ascertain, from the evidence in case of default, or from the confession by plea of the parties, if they appear, or from the verdict by which any issue of fact shall be detemined, and shall declare the rights, titles, and interests, of all the parties to such proceedings, petitioners as well as defendants, so far as the same shall have appeared, and shall determine the rights of the parties in such lands and tenements, and give judgment that partition be made be-

tween such of them as shall have any right therein, in accordance with such right thus ascertained.

SEC. 15. If neither party require a jury, any fact arising under this act may be referred to the court, and the decision of the court shall have the same effect as the verdict of a jury.

SEC. 16. Whenever any judgment of partition shall be rendered, the court shall by rule or order appoint not less than three nor more than five commissioners, residents of the county in which the premises to be divided shall be situate, to make the partition so adjudged, according to the respective rights and interests of the parties, as the same were ascertained and determined by the court; and on such rule or order, the court shall designate the part or shares which shall remain undivided, if any, for the owners whose interest shall be unknown and not ascertained.

SEC. 17. The commissioners shall forthwith proceed to make partition, according to the judgment of the court, unless it shall appear to them, or a majority of them, that partition of the premises cannot be made without great prejudice to the owners, in which case they shall make report of such fact in court, under their hands, accompanied by an affidavit of the truth of the fact stated in such report so returned.

SEC. 18. In making partition, the commissioners shall divide the lands and tenements, and allot the several portions and shares thereof to the respective parties, quality and quantity relatively being considered by them, according to the respective rights and interests of the parties, so adjudged by the court, designating the several shares and portions by metes and bounds, and may when necessary, employ a surveyor and assistants to assist them therein.

SEC. 19. The commissioners shall make a full and detailed report of their proceedings, in writing signed by them or a majority of them, specifying therein the manner of executing the trust, and describing the lands divided, and the shares allotted to each party, with the quantity of each share, the boundaries, courses, and distances, together with such other facts as may be necessary for a complete elucidation of such division; which report shall be accompanied by the affidavits of such commissioners as may sign such report, verifying the facts set forth therein.

SEC. 20. Upon good cause shown by either party, on the report being made and returned to the circuit court, it may be set aside by the court, who may appoint new commissioners, who shall proceed in like manner as herein before directed; but the court shall not set aside a

second report for the same cause for which the first report was set aside.

SEC. 21. If no such cause be shown, the report shall be confirmed, and judgment shall thereupon be given, that such partition be firm and effectual forever, and such judgment shall be binding and conclusive on all the parties to the proceedings, and their representatives, and all other persons claiming under them by right derived after the commencement of the proceedings.

SEC. 22. A copy of such report, and of the judgment, if confirmed, duly certified by the clerk of the court, shall be recorded in the office of the recorder of the county in which the estate divided is situate.

SEC. 23. If the commissioners so appointed shall report to the court that the land or tenements of which partition had been directed are so situated, or that any lot or portion thereof is so situated, that partition thereof cannot be made without great prejudice to the owners thereof, the court may, if satisfied that such report is just and correct, make an order that the commissioners sell the premises so situated, at public auction, to the highest bidder.

SEC. 24. The court making such order of sale, shall therein direct the terms and conditions, time and place, of sale, the credit, if any, and the security to be taken.

SEC. 25. The commissioners shall give notice of the time and place and terms of any sale to be made by them, in accordance with the order of the court directing such sale.

SEC. 26. If the premises consist of distinct farms, buildings, tracts, or lots of land, they shall be sold separately, or, where any tract of land or lot can be divided for the purpose of sale, with advantage to the parties interested, it may be so divided and sold in parcels.

SEC. 27. No commissioner, nor any person for his benefit, shall purchase or be directly or indirectly interested in the purchase of any of the premises sold, nor shall any guardian of any minor or person of unsound mind, party to the proceedings, purchase or be interested in the purchase of any of the lands, the subject of the proceedings, except for the benefit or in behalf of his ward; and all sales contrary to the provisions of this section shall be void.

SEC. 28. After completing such sale, the commissioners shall report their proceedings to the court, on their oath, with a description of the different parcels of the land sold, the name of aech purchaser, and the price bid by him, which report shall be filed in the court.

SEC. 29. If such sale be approved and confirmed by the court, an order shall be entered, directing the commissioners, or a majority of them, to execute conveyances pursuant to such sale ; and the commissioners shall execute such conveyances accordingly.

SEC. 30. The conveyances so executed shall be acknowledged or proven, and recorded, in the same manner as other conveyances of lands, and shall be a bar both in law and equity against all persons interested in such premises, and who shall have been parties to the proceedings, and against all other persons, claiming from or under such parties, or either of them by title derived after suit commenced.

SEC. 31. The proceeds of every such sale, after deducting the costs and expenses of the proceedings, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises, and shall be paid to them, their guardians or legal representatives, by the commissioners.

SEC. 32. When any of the parties whose interests have been sold are absent from the State, without any legal representatives in this State, or are not known or named in the proceedings, the court shall direct the shares of such parties to be deposited in the bank of the State of Arkansas, to the credit of such persons.

SEC. 33. All joint tenants and tenants in common, who now hold or shall hereafter hold, jointly or in common, for years or for life or lives, and all joint tenants or tenants in common, where one or more of them shall have estates for years, or for life, or for lives, with the others of them who have or shall have, estates of inheritance or in fee, and each of them, in every such case shall have the like remedy for the partition of any lands or tenements so held by them in joint tenancy or tenancy in common, and in all respects subject to the like proceedings as herein before prescribed in other cases.

SEC. 34. No partition or sale of land, tenements, or hereditaments, devised by any last will and testament, shall be made under the provisions of this act, contrary to the intention of any such testator, expressed in such last will and testament.

SEC. 35. The guardians of all minors and persons of unsound mind, appointed according to law, shall be, and are hereby authorized, in behalf of their respective wards, to do and perform any matter or thing respecting the division of any land or tenements, as herein directed, which shall be binding on any such ward, and deemed as valid to every purpose as if the same had been done by such ward after his disabilities were removed.

SEC. 36. It shall be lawful for the circuit court of the proper county, for any of the purposes intended by this act, and before or after any proceedings by virtue thereof, to appoint a guardian for any minor, whether such minor resides in or out of this State, and such guardian, for all the purposes of this act, shall have the same powers as any general guardian.

SEC. 37. It shall be the duty of any court appointing any guardian aforesaid for any minor entitled to any moneys, arising from the sale aforesaid, to require of such guardian a bond to the State, with such security as the court shall deem sufficient, conditioned for the faithful discharge of the duty or trust committed to him, and that he will render a just and true account of such guardianship, in all courts and places when thereto required.

SEC. 38. In case of death, resignation, neglect or refusal to act of any of the commissioners to be appointed as aforesaid, before the duties, trust, and services, hereby required of them shall be completed, the court, or judge thereof in vacation, may appoint another commissioner, who shall be vested with the like powers and authority as if he had been originally appointed.

SEC. 39. The commissioners to be appointed in pursuance of this act, shall be entitled to recover from the person making application for partition of any lands under the provisions of this act, the sum of one dollar and fifty cents, for every day they shall be employed in effecting such division.

SEC. 40. On all final judgments to be given upon any such petition for partition being made, or upon the sale of the premises mentioned in any petition, it shall be lawful for any of the parties to such judgment to appeal or bring a writ of error thereon, within the same time, and under the same restrictions and regulations as in other cases.

[Approved: March 3, 1838.]

CHAPTER 108.

PARTNERSHIPS.

SECTION

1. Limited partnerships to be formed, but not for purposes of banking.
2. Such partnerships how to be composed, and liabilities of general and special partners.
3. General partners alone to transact business, sign for and bind the firm.
4. *Certificate* to be made by persons forming such partnership, and requisites thereof.
5. To be acknowledged, and how.
6. To be filed and recorded, and how.
7. Where there are places of business in different counties, certificate to be recorded in each.
8. Affidavit to be filed by general partner.
9. Partnerships not deemed to be formed until certificate filed and recorded, and affidavit filed; and if false statement made, all to be liable as general partners.
10. Terms of partnership to be published, how, and effect of not publishing.
11. Affidavit of publication to be filed, and to be evidence.
12. On every renewal or continuance of such partnerships, same steps to be taken, and effect of failure to do so.
13. What alterations to be deemed a dissolution of partnership—and partnership carried on after such alterations to be deemed general.
14. What shall be name of firm. Special partner whose name inserted, to be deemed a general partner.

SECTION

15. Suits against firm, how brought and conducted.
16. Special partner not to withdraw stock, but may receive interest and profits.
17. When capital reduced thereby, how to be restored.
18. Power of special partner to examine and advise. Not to transact business of firm, or be employed as agent or attorney, and effect of so doing.
19. General partners, how liable to account.
20. Partners, how liable for fraud.
21. What acts done by partnership during or in contemplation of insolvency, to be void.
22. What acts of partner under same circumstances void.
23. Special partner violating provisions of two last sections, considered as general partner.
24. Partnerships becoming insolvent, special partner not to claim as creditor till other creditors satisfied.
25. Dissolution of partnership before time specified in such certificate, how to be made.
26. Capital may consist of cash, merchandise, or real or personal estate, and such capital to be appraised, and certificate thereof filed.
27. Extension of provisions to partnerships for other purposes.
28. Stock not paid in, to be secured by mortgages.

SEC. 1. Limited partnerships for the transaction of mercantile, mechanical or manufacturing business, within this State, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed, but the provisions of this act, shall not be construed to authorize any such partnership for the purpose of banking.

SEC. 2. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law, and one or more persons who shall contribute in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital.

SEC. 3. The general partners only shall be authorized to transact business, and sign for the partnership and to bind the same.

SEC. 4. The persons desirous of forming such partnership, shall make and severally sign a certificate which shall contain, first, the name of the firm under which such partnership is to be conducted; second, the general nature of the business to be transacted; third, the names of all the general and special partners interested therein, distinguishing which are general, and which are special partners, and their respective places of residence; fourth, the amount of capital which each special partner shall have contributed to the common stock; fifth, the period at which the partnership is to commence, and the period at which it will terminate.

SEC. 5. The certificate shall be acknowledged by the persons signing the same, before some judge or justice of the peace of this State, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of conveyances of land.

SEC. 6. The certificate so acknowledged and certified, shall be filed in the office of the clerk of the circuit court of the county in which the principal place of business of the partnership shall be situated, and shall be recorded by him at large in a book to be kept by him for that purpose, which shall be open to public inspection.

SEC. 7. If the partnership shall have places of business situated in different counties, a copy of the certificate and acknowledgment, duly certified by the clerk in whose office the same shall be filed, under his official seal, shall be filed and recorded in the office of the clerk of the circuit court of every such county.

SEC. 8. At the time of filing the original certificate and the acknowledgment as before directed, an affidavit of one of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash.

SEC. 9. No such partnership shall be deemed to have been

formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as before directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

SEC. 10. The partners shall publish the terms of the partnership when recorded, for at least six weeks immediately after the same shall be recorded, in some newspaper printed in this State, to be designated by the clerk of the circuit court in which such record shall be made, and if such publication be not made, the partnership shall be deemed general.

SEC. 11. The affidavit of the publication of the terms of such partnership by the printer of the newspaper in which the same may be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

SEC. 12. Every renewal or continuance of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership.

SEC. 13. Every alteration which shall be made, in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on, after any such alteration shall have been made, shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the preceding section.

SEC. 14. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm with his privity, he shall be deemed a general partner.

SEC. 15. Suits in relation to the business of the partnership, may be brought and conducted by and against the general partners, in the same manner as if there were no special partners.

SEC. 16. No part of the sum which any special partner shall have contributed to the capital stock, shall be withdrawn by him in the shape of dividends, profits or otherwise, at any time during the continuance

of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if after the payment of such interest any profits remain to be divided, he may also receive his portion of such profits.

SEC. 17. If it shall appear that by the payment of interest or profits to any special partner, the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his capital with interest.

SEC. 18. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. If he shall interfere contrary to these provisions, he shall be deemed a general partner.

SEC. 19. The general partners shall be liable to account to each other, and to the special partners, for their management of the concern, both in law and in equity as other partners now are by law.

SEC. 20. Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable civilly to the party injured, to the extent of his damages, and shall also be liable to an indictment for a misdemeanor, punishable by fine and imprisonment, or both, at the discretion of the court by which he shall be tried.

SEC. 21. Every sale, assignment or transfer of any of the property or effects of such partnership, when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent of giving preference to any creditor of such partnership or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given by such partnership under the like circumstances and with like intent, shall be void as against the creditors of such partnership.

SEC. 22. Every such sale, assignment or transfer of any of the property or effects of ageneral or special partner, made by such general or special partner when insolvent, or in contemplation of insolvency of the partnership, with the intent of giving any creditor of his own or of the partnership, a preference over other creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner under the like circumstances, and with like intent, shall be void as against the creditors of the partnership.

SEC. 23. Every special partner, who shall violate any of the pro-

visions of the two preceding sections, or shall concur in or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

SEC. 24. In case of the insolvency of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied.

SEC. 25. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the clerk's office in which the original certificate was recorded, and published once in each week, for four weeks, in some newspaper printed in this State.

SEC. 26. It shall be also lawful and competent for all persons wishing to avail themselves of the provisions of this act, to make advances of capital into such partnerships, not only in cash, but in merchandise, and personal or real property; and all such capital so invested, shall be first appraised by three disinterested individuals, who shall, upon oath, declare and certify the value of the same; and all such certificates shall become a part of the records of such copartnership.

SEC. 27. It shall be lawful, under the provisions of this act, for persons to form partnerships for any mercantile or commercial purpose, manufacturing, navigation, or insuring, or for the construction of roads, railroads, canals, &c., and to advance such sums as may be deemed by such partnerships or associations, necessary, from time to time, for the interests and the advancement of the objects of such partnerships.

SEC. 28. All sums not paid at the time of forming such partnership, shall be secured by mortgage on real estate, and the amounts so secured by each mortgage shall not exceed the fair cash value of the real estate mortgaged.

[Approved and in force: March 2, 1838.]

CHAPTER 109.

PATROLS.

SECTION
1. Company of, to be appointed by county court in each township, and their term of service.
2. Company, of how many to consist, and how to be sworn.
3. Company, how many hours to patrol.
4. what places to visit.
5. Slaves found at unlawful assembly, or strolling about, how punished.
6. White person, found with negroes in night time at suspected places, proceedings against, and how punished.
7. Exemption of patrols.
8. Captain of, to be notified of his appointment, and furnished with list of his men, &c.
9. Penalty for patrol refusing to act.
10. Compensation of patrol, how to be fixed.

SEC. 1. The county courts shall, from time to time, when it may be thought necessary, appoint in each township in their respective counties, a company of patrol, to continue in office one year.

SEC. 2. Each company shall consist of one discreet person to be called the captain of the patrol, and as many under his direction as the county court shall deem necessary to appoint, not exceeding ten, who shall severally be sworn to perform the duties assigned them by this act.

SEC. 3. The patrol so appointed shall patrol as many hours in each night as the court shall direct, (not less than twelve,) within the bounds assigned them.

SEC. 4. The patrol shall visit all negro quarters and other places suspected of unlawful assemblages of slaves.

SEC. 5. Any slave found at such assembly, or who shall be found strolling about from one house or plantation to another, without a pass from his master, employer or overseer, shall receive any number of lashes at the discretion of the patrol, not exceeding twenty.

SEC. 6. If any white person shall be caught in company with negroes, in the night time, in suspicious places, by the patrol, they shall take him before some legally authorized justice of the peace who shall on conviction of the person so caught, commit him to jail for trial at the next term of the circuit court; and if he shall be found guilty by a jury, he shall be punished with the like number of lashes as would have been inflicted on a slave, not exceeding twenty.

SEC. 7. Persons appointed patrols and performing their duties, shall be exempt from serving on juries and perfoming militia duty, for the time they may continue to perform their duties as patrols.

SEC. 8. The captain of the patrol shall be notified of his appointment and shall be furnished with a list of his men who shall be subject to the orders of the captain, under the provisionsof this act.

SEC. 9. If any person appointed a patrol under the provisions of this act, shall refuse to perform the duties thereof when called on, such person shall be fined by the county court, on the report of the captain of the patrol, not less than five nor exceeding twenty dollars.

SEC. 10. The county courts may award suchcompensation to the captain and patrols as they may deem proper.

[Approved and in fore: December 15, 1837.]

CHAPTER 110.

PAUPERS.

SECTION
1. Every county to maintain and support its own.
2. What officers to give information of such paupes, and duty of county court.
3. Non-resident paupers, how relieved.

SEC. 1. Every county in this State shall relieve, maintain, and support its own poor, such as the lame, the blind, the sick, and other persons, who, from age and infirmity, are unable to support themselves, who have no sufficient estate of their own, and who have not removed from any other county for the purpose of imposing the charge of keeping them on any county other than the one in which they last lived.

SEC. 2. It shall be the duty of every sheriff, coroner, constable, and justice of the peace, to give information to their respective county courts of any such poor person or persons, as are described in the first section of this act; and such court, so soon as it shall be satisfied that they come within the purview and meaning of this act, shall from time to time, and as often and for as long a time as it may be necessary, provide, at the expense of the county, for the support and maintenance of such poor persons, and order, from time to time, the defraying such expenses, by drawing orders on the treasury of the county.

SEC. 3. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick or die in any county in this State, not having money or property to pay his board, nursing, medical aid or burial expenses, it shall be the duty of the court to make such allowances therefor as shall seem just.

[Approved: November 4, 1836.]

CHAPTER 111.

PEDLERS.

SECTION

1. Definition of.
2. To take license before commencing business.
3. Every separate boat, cart, beast of burden or pack, to pay separate license.
4. How to obtain license, and for what time.
5. Penalty for peddling without license.
6. To produce license on demand of officer. Penalty for not doing so, and how recovered.
7. Who may apprehend person peddling without license, or refusing to produce license, and proceedings thereon —or justice may issue warrant.
8. Such accusation, how to be tried.
9. Limitation of action for such penalty or forfeiture.
10. This act to apply to clock pedlers. Forfeitures to be paid into county treasury.
11. No pedler to sell spirituous liquors in small quantities; and penalty for so doing, and how recovered.

SEC. 1. Whoever shall deal in selling of goods, wares or merchandise, other than the growth, produce or manufacture of this State, by going from place to place, either by land or water, to sell the same, is declared to be a pedler.

SEC. 2. Every pedler shall, before he commences business, pay for and take a license for the privilege of peddling, as hereinafter provided.

SEC. 3. Every separate boat, cart, beast of burden or pack, shall be deemed a separate establishment, and shall be taxed and pay for a separate license accordingly.

SEC. 4. Every person wishing to peddle in this State, shall apply to the collector of the revenue of any county, and on paying to such collector the sum that is chargeable by law for such license, he shall receive from such collector a license to peddle for the term of six

months, which license shall authorize such person to peddle throughout this State.

SEC. 5. Every person who shall be found guilty of dealing as a pedler, contrary to the provisions of this act, shall forfeit and pay double the amount of the license he would by law have been chargeable with.

SEC. 6. Every pedler shall, upon the demand of any sheriff, collector or constable of this State, produce his license and allow the same to be read by such person making the demand, and in default thereof, shall forfeit to the county the sum of ten dollars, to be recovered before any justice of the peace, with costs, and be compelled to take out a license as provided in the second section of this act, and in default thereof he shall be fined by said justice in double the amount of such license with costs, which fine shall be paid, one half into the county treasury, and the other half to the person suing for the same.

SEC. 7. Every sheriff, collector and constable may apprehend and detain any person found dealing as a pedler contrary to the provisions of this act, or who shall fail to produce his license on demand as aforesaid, and may convey the offender without unnecessary delay, before any justice of the peace of the county in which he shall be apprehended, or the justice may upon legal information issue his warrant for the arrest of the offender as in other cases

SEC. 8. It shall be the duty of such justice to try all such accusations, as other similar cases are triable before him, and no delay shall be allowed, unless at the request of the accused and on good cause shown.

SEC. 9. No suit or prosecution shall be brought for the enforcement of any penalty or forfeiture imposed by this law, more than six months after the commission of the offence charged.

SEC. 10. The provisions of this act shall apply as well to clock pedlers as others. All forfeitures, fines and penalties imposed by this act, shall be paid into the county treasury.

SEC. 11. No pedler shall be authorized to sell any spirituous or vinous liquor, by virtue of his license, in less quantities than one gallon; and for selling less than one gallon, he shall forfeit and pay one hundred dollars for each offence, to be recovered before any justice of the peace in an action of debt, one half to the person suing for the same, and one half to the use of the county.

[Approved: February 16, 1838.]

CHAPTER 112.

PENAL BONDS.

SECTION

1. In actions on, where by th condition the bond is to be void on pyment of a smaller sum, the condition shall be set out, and breaches assignecin the declaration.
2. Defendant may plead payment in bar, though not made strictly ccording to condition.
3. Payment of principal, interst and cost, while action pending, to e a discontinuance.
4. Form of judgment and exeation.
5. In action on, with conditior other than for payment of money; ad in action for penal sum for non-peformance of covenant, &c. specific braches shall be assigned in the declaraion.
6. Jury finding assignment tre, to assess damages occasioned by breach.
7. Judgment upon confession, demurrer or default, court to order inqiry and assessment of damages, anc proceedings therein.
8. Verdict assessing damages o be entered of record, and form of judgment.
9. Execution, form of.
10. Payment of sum mentioned in execution to satisfy the damages, bit judgment for penalty to stand as security for future damages.
11. Upon subsequent breaches *scire facias* to issue, and form thereof.
12. Proceedings and judgment thereon.
13. Execution on such judgment, effect and operation of, and judgment still to stand.
14. Assignment of breach found untrue, to be a bar to another suit on same breach.
15. Person suing on official bond for his use, how to sue and declare.
16. Pleadings and proceedings in such action.
17. How far judgment therein to be a bar to future action.
18. Pendency of such suit, or judgment therein, not to affect suit brought by another person on same bond.
19. Person obtaining judgment therein may again bring suit for further default or delinquency.
20. No *sci. fa.* on judgment upon such bond for any breach.
21. Such suit and judgment to be deemed private, and the relator liable for costs.
22. How plea of former judgment may be made a bar to such action.
23. In what cases security to be acquitted and discharged from further liability.
24. If the amount paid or to be paid by him is not equal to the amount of his liability, it may be allowed to him in estimating his liability in such action.
25. Direction to be endorsed on execution against such principal and sureties.
26. Where several judgments are so obtained at one time, how to be paid *pro rata*.
27. Provisions of this act as to official bonds, to what bonds to apply.

SEC. 1. In all actions brought upon bonds to which there is a condition or defeasance annexed by which the same is to become void on the payment of a less sum, the plaintiff shall set out the condition in his declaration and may assign as many breaches as he may think proper.

SEC. 2. The defendant in such action may plead payment of the principal sum and interest due by the condition of such bond before the commencement of such action, in bar thereof, although the payment was not strictly according to such condition.

SEC. 3. Whenever any action shall be pending on such bond, the defendant may at any time before judgment rendered in such action, pay to the plaintiff, or bring into court for the plaintiff's use, the principal sum and interest due on such bond, together with the costs in such action, and thereupon such action shall be discontinued.

SEC. 4. If judgment be recovered on any such bond, such judgment shall be rendered for the sum of money really due, according to such condition, with interest and costs, and execution shall issue thereon accordingly.

SEC. 5. When an action shall be prosecuted in any court of law, upon any bond for the breach of any condition other than for payment of money, or shall be prosecuted for any penal sum for the non-performance of any covenant or written agreement, the plaintiff in his declaration shall assign the specific breaches for which the action is brought.

SEC. 6. Upon the trial of such action if the jury find that any assignment of such breaches is true, they shall assess the damages occasioned by the breach, in addition to their finding.

SEC. 7. If in such action the plaintiff shall obtain judgment upon demurrer, by confession or default, the court shall make an order therein, that the truth of the breaches assigned be inquired into, and the damages sustained thereby assessed, at the same or the next term, and the court shall proceed thereon in the same manner as in other cases of inquiry of damages.

SEC. 8. In every such action, if the plaintiff recover, the verdict assessing the damages shall be entered on the record, and judgment shall be entered for the penalty of the bond, or for the penal sum forfeited, as in other actions of debt, together with costs of suit, and with a further judgment that the plaintiff have execution for the damages so assessed, which damages shall be specified in the judgment.

SEC. 9. The execution on such judgment shall be in the usual form in actions of debt, reciting the recovery, and directing the sheriff to levy the amount of damages so assessed, which amount shall be stated with interest thereon from the time of such assessment, and the costs of such suit.

SEC. 10. If the amount so directed to be levied, shall be col-

lected, or otherwise paid or satisfied, the real and personal estate, and body of the defendant shall be exonerated from further liability for the damages so assessed: but the judgment rendered for the penalty of the bond shall remain as a security for any damages that may be thereafter sustained by the further breach of any condition of such bond, or the non-performance of any other covenant or written agreement by the defendant, the performance of which was secured by such penal sum.

SEC. 11. Whenever such further breaches shall occur, the plaintiff or his personal representatives may have a *scire facias* upon such judgment, suggesting such breaches against the defendant and all parties bound thereby, and commanding that they be summoned to show cause why an execution should not be had upon such judgment for the amount of damages sustained by such further breaches.

SEC. 12. The like proceedings to ascertain such damages, shall be had upon such writ, as herein before provided in the original suit on the bond: and if the plaintiff recover, judgment shall be rendered that the plaintiff have execution to collect the amount of damages assessed and costs.

SEC. 13. The execution issued on such judgment shall have like effect and be proceeded on in all things as in the first instance; but the judgment shall remain as a security for further breaches, and so on as often as occasion may require.

SEC. 14. Whenever in any action brought according to the provisions of this act, the jury shall find that any assignment of breaches is not true, the same shall be a bar to any other or further suit by scire facias or otherwise, for the recovery of any damages alleged to have been sustained by occasion of the same breaches so assigned.

SEC. 15. In all cases where by the laws of this State, any person is authorized to prosecute a suit to his own use on any official bond, he shall sue in the name of the State or other obligee named in the bond, stating in the process, pleadings, proceedings and record in such action, that the same is brought for the use of the person suing.

SEC. 16. In such actions, the same pleadings and proceedings shall be had as before provided in cases of suits upon bonds with conditions other than for the payment of money, except as hereinafter otherwise provided.

SEC. 17. A judgment for the defendant in such action, shall be a bar to any other suit that may be brought on the same official bond for the use of the same person for any delinquency or default which was

assigned as a breach of the condition of such bond in the action in which such judgment was rendered.

SEC. 18. Any other party aggrieved may in like manner prosecute an action on such official bond, and the pendency of any suit for the use of any other person on the same bond, or a judgment recovered by or against any other person on such bond, shall not abate or in any manner affect such suit or the proceedings therein, except as hereinafter provided.

SEC. 19. Any person who may have recovered any judgment upon such official bond, may, in like manner, again prosecute an action on such bond, whenever he may be aggrieved by any default or delinquency, other than such as shall have been the subject of a former suit, and shall proceed therein as herein before provided.

SEC. 20. No scire facias shall be brought upon any judgment rendered upon such official bond, by the same or any other relator, for any breach of the condition of the bond.

SEC. 21. Every suit brought on such official bond to the use of the party aggrieved, and every judgment thereon, shall be deemed the private suit and judgment of the relator, in the same manner as if he were the nominal plaintiff, and such relator shall be liable for costs as other plaintiffs.

SEC. 22. No such suit shall be barred, nor shall the amount which the plaintiff shall be entitled to recover be affected, by any plea made by any surety in such bond, of a former judgment recovered thereon, unless it be accompanied by an allegation that the sureties, or some of them, have been obliged to pay the damages on such judgment, or some part thereof, for the want of sufficient property of the principal whereon to levy the same, or that they will be obliged to pay the same, or a part thereof, for the same reason; nor unless such plea be verified by oath.

SEC. 23. If it shall appear that the amount of damages so recovered, which a security has been or will be obliged to pay, as specified in the preceding section, is equal to the amount for which such defendant shall be liable by virtue of the bond, he shall be acquitted and discharged from all further liability, and judgment rendered in his favor.

SEC. 24. If it shall appear that the amount of damages so recovered and which such surety has paid, or will be obliged to pay, is not equal to the amount of his liability, the amount thereof shall be allowed to him in estimating the extent of his liability in any such action.

SEC. 25. Whenever a judgment shall be obtained on any official

bond, against principal and sureties, a direction shall be endorsed on the execution, by the plaintiff or his attorney, to levy the amount, in the first place, on the property of the principal; and if sufficient property of such principal cannot be found to satisfy such execution, then to levy the deficiency on the property of the sureties.

SEC. 26. If several judgments be obtained at the same time, upon any official bond, for damages amounting in the whole to more than the sum for which the sureties are liable, the court shall order the moneys levied from the property of the sureties on such judgments, to be divided and distributed among the persons to whose use such judgments were rendered respectively, in proportion to the amount of their respective recoveries.

SEC. 27. The provisions of this act in relation to suits on official bonds, shall apply as well to suits on bonds of administrators, executors, guardians, and others required by law to give bond, with condition for the performance of any duty or trust, as to suits on bonds of officers; and the persons aggrieved may prosecute suits in the same manner, and with like effect, and subject in all respects to the provisions herein contained, in respect to suits on official bonds; and the courts shall possess the same power in relation to such suits.

[Approved: February 21, 1838.]

CHAPTER 113.

PERPETUATING TESTIMONY.

SECTION

1. Depositions for, in what cases to be taken.
2. Commission for, to be granted on petition.
3. How issued, and form of.
4. To whom directed, when testimony to be taken out of the State.
5. Notice of taking depositions to be given, and copy of petition.
6. How served upon married women and minors.
7. Notice to persons out of State, how given.
8. Power of judge or justice to issue subpœnas and enforce obedience thereto.
9. Manner of taking depositions.

SECTION

10. To be reduced to writing, in what language, and to be read to, and subscribed and sworn to by witness.
11. Judge or justice may adjourn, from day to day.
12. Depositions, how certified and sealed up, and to whom transmitted.
13. Depositions and papers to be recorded, and original, with certificate of record, to be delivered to party petitioning.
14. Depositions so taken, or copies of record thereof, how and in what cases to be read in evidence.
15. Fees, how to be paid.

SEC. 1. Depositions of witnesses to perpetuate testimony, may be taken when any person is a party, or expects to be a party to a suit pending, or about to be commenced in any court of this State, and the object is to perpetuate the remembrance of any fact, matter or thing relating to the boundary of land, or to the improvements of lands, the name or former name of water courses, the name or former name of any portion or district of country, or regarding the ancient customs, laws or usages of the inhabitants of this country, as far as may relate to pedigree, title to slaves, or any other matter or thing necessary to any estate real or personal, or personal right.

SEC. 2. A commission shall be granted to take such depositions, by a judge of the supreme or circuit court, on petition in writing, supported by the affidavit of the applicant, setting forth the facts intended to be proved, the names of the persons whose testimony is desired, and the place or places of residence.

SEC. 3. The commission shall be issued by the clerk of the court over which the judge granting the same presides, and being witnessed by such clerk, and sealed with the seal of his court shall be directed to any judge of any court of record, or to any two justices of the peace, being in the county where such testimony is to be taken, requiring such judge or justices to take the depositions of the witnesses therein named.

SEC. 4. If the witnesses, whose testimony is sought to be taken, reside out of this State, the judge granting such commission shall direct the same to some commissioner therein to be named, and when taken by such commissioner and duly certified, such depositions shall have the same effect as if taken before a judge or justices within this State.

SEC. 5. The party applying for the commission shall give notice in writing of the time and place of taking such depositions, to every person who may be known to be interested, his attorney or agent, at least twenty days before the taking of the same, and a copy of the petition upon which the commission was granted shall accompany such notice.

SEC. 6. In case the person interested be a married woman, the notice shall be served on her husband; and if a minor, on the guardian of such minor; and a guardian *ad litem* may be appointed by the judge granting the commission, when there is no guardian.

SEC. 7. The publication of such notice in some newspaper published in this State, at least three weeks consecutively, the three first publications to be more than fifteen days before the taking of such

depositions shall be a sufficient notice to all persons residing out of this State.

SEC. 8. The judge or justices to whom such commission is directed, may issue subpœnas to such witnesses, requiring them to appear and testify at a time and place therein named, and enforce obedience thereto by attachment.

SEC. 9. The judge or justices shall attend at the time and place appointed for taking such depositions, and if it shall appear to such judge or justices that notice has been given as required by this act, such judge or justices shall then and there reduce to writing, all the questions put to the witnesses by the party desiring depositions, and also the questions by all and every person attending, who shall feel interested, and such persons shall have liberty to examine and cross-examine the witnesses.

SEC. 10. Such judge or justices shall reduce to writing all the answer of the witnesses to such questions as shall be put to them, and all such questions and answers shall be written in the language of the witness, be it English or any other language, and being distinctly read to such witness, shall be sworn to and subscribed by such witness.

SEC. 11. The judge or justices shall have power to adjourn from day to day while taking such depositions, when the same may be necessary.

SEC. 12. The judge or justices taking such depositions, shall attach his or their certificate, stating the time and place where such depositions were taken, that the witnesses were duly sworn or affirmed as to the truth of their depositions, and that they subscribed the same; and shall enclose them together with the commission and the evidences of notice, and the whole being carefully sealed up, shall be transmitted by the judge or justices taking such depositions to the clerk of the circuit court in the county in which the property or matter is situated or belongs, to which such depositions relate.

SEC. 13. The clerk of the circuit court of the county where such depositions belong, shall on receiving the same, immediately, in his *ex officio* capacity of recorder, record the depositions with the accompanying papers, and shall make a certificate on the back of the depositions, that the same together with the accompanying papers, (naming them,) were by him duly recorded: and deliver the original depositions and accompanying papers to the party upon whose petition the commission issued.

SEC. 14. Depositions taken and certified in conformity to the

preceding provisions of this act, or duly certified copies of the record of such depositions may be used and read as evidence in any case to which they relate, upon the following conditions: First, if the deponent be dead; second, if he be unable to give testimony by reason of insanity or imbecility of mind; third, if he be rendered incompetent by judgment of law; fourth, if he be removed so that his testimony cannot be obtained: but all legal exceptions may be taken and allowed to the reading of such depositions on any trial at law or in equity, in which the same may be offered in evidence.

SEC. 15. All fees and costs attending the taking and recording such depositions shall be paid by the party on whose application the commission was granted.

[Approved: February 24, 1838.]

CHAPTER 114.

PETITIONS.

SECTION
1. To General Assembly, to be made public by previous notice, and how.
SECTION
2. Must be accompanied by affidavit of such publication by notice.

SEC. 1. No petition shall, after the end of the present session of the General Assembly, be finally acted on, which prays for the creation of a new county, the change of a county line, or the removal of the seat of justice of any county, or which may affect the rights and interest of any person, unless a copy of such petition be set up at the court house door of the county or counties to be affected thereby, and also one copy in the most public place in each township in such county or counties, forty days before such petition shall be presented to the General Assembly.

SEC. 2. Every such petition shall be accompanied by the affidavit of some creditable person, stating that the notice required in the preceding section was given in the manner prescribed.

[Approved: November 18, 1837.]

CHAPTER 115.

POSSE COMITATUS.

SECTION
1. Power of officers to call upon, and on what persons.
2. Penalty for refusal or neglect to obey, and how recovered.

SEC. 1. In all cases where, by the common law or any statute of this State, any officer is authorized to execute any process, he may call to his aid all free white male inhabitants above the age of twentyone years, of the county in which such officer is authorized to act.

SEC. 2. If any person shall refuse or neglect to obey the summons of any such officer, the person so neglecting or refusing shall be fined in any sum not less than ten nor more than one hundred dollars, to be recovered by indictment.

[Approved: November 18, 1837.]

CHAPTER 116.

PRACTICE AT LAW.

SECTION
INSTITUTION OF SUIT. WRIT ORIGINAL.
1. Suits where and how instituted.
2. Declaration, &c. to be filed before writ issued, but not to accompany writ.
3. Date and return day of writ.
4. Suits where brought.
5. Where against several defendants.
6. Local actions, where instituted, and writ where to run.
7. Summons when to issue, and form of.
8. Capias to issue on order of court, judge or clerk.
9. No such order to be made except on affidavit.
10. Amount due, how ascertained in affidavit.
11. Form and endorsement of capias.
12. Clerk may issue alias, &c. without order of court.

SERVICE.
13. Summons, how executed.
14. When offer of service sufficient.
15. Capias how executed.
16. Defendant discharged on giving bond, and form thereof.
17. When officer to be made co-defendant.
18. Endorsement of return, to be made by clerk.
19. Exceptions to sufficiency of bail or bail bond, when determined.
20. Endorsement and return to be made on writ by officer executing.
21. Notices, by whom served.

SECTION
22. How and by whom served, and how returned.

BAIL.
23. What officers not to become bail, without leave of court on record.
24. When bail reduced or vacated.
25. Notice of application therefor to be given.
26. *Sci. fa.* on bail bond forfeited, and proceedings thereon.
27. Two *non ests* equivalent to service.
28. Time allowed for surrender of principal.
29. Surrender, when to be made.
30. Proceedings upon such surrender.
31. Proceedings against defendant after surrender.
32. No suit or *sci. fa.* to be brought on the bail bond, till after execution returned.
33. Pleadings by bail, in action against them.
34. Death of principal, when to exonerate bail.
35. On surrender after commencement of suit against bail, bail to pay costs.
36. Bail to have judgment against principal for money paid by motion.
37. Remedy of officer when made co-defendant.

MINORS, SUITS BY AND AGAINST.
38. How commenced by and prosecuted.
39. Next friend how appointed.
40. Consent of next friend and order of appointment to be filed.
41. Guardian or next friend responsible for costs.
42. Guardian to be appointed for minor defendant.
43. Appointment how made.
44. Guardian for defendant not liable for costs.

PLEADING, &C.
45. Writ executed thirty days before return day, to be tried at first term.
46. When tried in other cases.
47. Proceedings when some defendants are served, and some not served in due time.
48. Effect of discontinuance in such case, as to liability of defendant.

SECTION
49. Essoigne and wager of law abolished, and suit not delayed for nonage.
50. Parties to appear in person or by attorney, Warrant of attorney not required.
51. Pleadings, how signed, endorsed and filed.
52. Plea to merits, at what time to be filed.
53. At what time, when writ served less than thirty and more than fifteen days before return day.
54. Replications, when to be filed.
55. Subsequent pleadings, when to be filed.
56. Copy of pleadings filed in vacation to be served on adverse party or attorney.
57. *Similiters*, and joinders in demurrer filed at any time, and without copy.
58. Courts may extend time for pleading.
59. Ancient forms and terms of pleading not necessary to be observed.

DEMURRERS.
60. Judgment on, and what defects regarded upon.
61. On demurrer, what defects &c. to be amended by the court.
62. May be joint and several.
63. Dilatory pleas and demurrers, when to be determined.

DECLARATION.
64. May be against all or part, when plaintiff has cause of action against several.
65. Averments in, when brought on instrument lost or destroyed.
66. In debt or assumpsit on statute.
67. In detinue or trover on statute.

PLEAS.
68. Several pleas allowed.
69. Liability of persons sued as executors, administrators, or executors *de son tort.*
70. Payment may be pleaded in bar of action on specialty or judgment, or of *sci. fa.* on judgment.
71. *Pleading*, in action against officer or person assisting him.
72. Pleading in action against any person for an act done by authority of statute.

SECTION
73. Replication to plea in such case, issue and evidence thereon.
74. Consideration of note under seal may be impeached by special plea.
75. Such plea to be verified by affidavit.
76. Several replications or rejoinders may be allowed by the court.
77. Effect of failure to plead in due time.
78. Effect of failure to reply in due time.
79. Practice when of several defendants some plead and others make default.
80. When court to assess damages upon judgment by default or on demurrer.
81. When to be assessed by a jury.
82. Issues of law to be first determined.

CONTINUANCES.
83. Suits not disposed of, to be continued at first term, and disposed of at second.
84. Allowed at first term for good cause shown, and costs thereof, how paid.
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SEC. 1. Suits at law may be commenced in any of the circuit courts of this State, by filing in the office of the clerk of such court a declaration, petition, or statement in writing, setting forth the plaintiff's cause of action, and by the voluntary appearance of the defendant, or by filing such declaration, petition or statement in such office and suing out thereon a writ of summons or *capias ad respondendum* against the person, or of attachment against the property of the defendant.

SEC. 2. No original writ shall be issued until the declaration, petition or statement be filed in the clerk's office; and the writ when issued shall be delivered to the officer charged with the execution thereof; but in no case shall the declaration, petition or statement accompany the writ. It shall remain on file in the clerk's office, subject to the examination and inspection of all parties.

SEC. 3. Every original writ shall be dated on the day it issues, and shall be made returnable to the first term of the court thereafter; but if the first day of such term be within fifteen days thereafter, then such writ shall be made returnable on the first day of the second term.

SEC. 4. Suits instituted either by summons or capias shall be brought, where the defendant is a resident of this State, either in the county in which the defendant resides, or in the county in which the plaintiff resides, and the defendant may be found: but no person who is a resident of this State, and who has not absconded from his usual place of abode, shall be arrested on a capias in any county other than that of which he is a resident; and suits commenced by attachment against the property of any person, shall be brought in the county in which such property may be found.

SEC. 5. Where there are several defendants in a suit instituted by summons or capias, and they reside in different counties, the suit may be brought in either of such counties, and a separate writ may be issued to each county against such of the defendants as reside therein; and when a defendant in a suit instituted by attachment, has property in several counties, separate writs of attachment may be issued to each county; and where there are several defendants in a suit, a capias may be issued against any one or more of them that are liable thereto, and a summons may be issued against the others.

SEC. 6. In all actions for trespass committed on lands, and all other actions deemed local at common law, the original writ may be issued from the county where the injury was committed, to any other county of this State where the defendant may be found; but in declaring in any such action, the plaintiff shall not set forth any thing or matter which would be the subject of a transitory action.

SEC. 7. The original writ, in all cases where it is not otherwise directed by law, shall be a summons, which shall charge the officer having charge of the execution thereof, to summon the defendant to be and appear in court on the return of such writ, and at a place to be specified in such writ, to answer the complaint of the plaintiff.

SEC. 8. A *capias ad respondendum* may be issued when it is allowed by the court out of which it is to be issued, or by any judge or clerk thereof in vacation, by an order in writing granting such writ; which order shall be endorsed on the declaration, petition or statement.

SEC. 9. No such order shall be made unless the court or officer be satisfied by the affidavit of the plaintiff, or some other person for him, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant has absconded from his usual place of abode, or that he is about to remove out of the State, or that the defendant is about to defraud him of his just demands, or that the plaintiff will be in danger of losing his debt unless the defendant is held to bail.

SEC. 10. When the amount of the plaintiff's demand is liquidated, the amount must be specified in the affidavit; and in all other cases the facts and circumstances of the case must be stated in the affidavit, so as to enable the court or officer to determine the amount in which bail ought to be given.

SEC. 11. A *capias ad respondendum* shall command the officer charged with the execution thereof, to take and safely keep the de

fendant, so that he may have his body before the court on the return day of the writ, and at a place to be specified in such writ, to answer the complaint of the plaintiff; and the officer issuing such writ of capias shall endorse thereon the amount in which the defendant shall be required to give bail.

SEC. 12. If in any suit the original process shall not be returned executed on the return day thereof, the clerk may issue an alias, pluries, or other process, without an order of the court.

SEC. 13. A summons may be executed either by reading the writ to the defendant, or by delivering him a copy thereof, or by leaving a copy thereof at his usual place of abode with some white person of the family over fifteen years of age.

SEC. 14. In all cases where the defendant shall refuse to hear such writ read, or to receive a copy thereof, the offer of the officer to read the same, or to deliver a copy thereof, shall be a sufficient service of the writ.

SEC. 15. The officer charged with the execution of a capias shall execute the same by arresting the defendant, and reading the writ to him; or by delivering him a copy thereof, and committing him to the common jail of the county, there to remain until discharged according to law.

SEC. 16. Every defendant so arrested, shall be discharged from such arrest upon his entering into bond to the plaintiff with sufficient security in a sum equal to the sum endorsed on the writ; and for the purpose of avoiding errors in taking the same, the condition of such bond shall be substantially in the following form: "The condition of the above obligation is such, that whereas, A. B. has lately sued out of the circuit court of the county of ——, a certain writ of capias ad respondendum in a certain action of —— against C. D. returnable to the next term of said court, to be holden at ——, in said county on the —— day of —— next ensuing the date hereof; now, if the said C. D. shall be and appear at the said court to be holden at ——, on the said —— day of —— next ensuing the date hereof; and if judgment be given against him at that or any subsequent term of said court, shall pay the debt and damages (or damages alone) and costs of suit or surrender himself in execution, or his securities shall do it for him; then the above obligation to be void and of no effect, otherwise to remain in full force and virtue;" and such bond shall be returned with the writ.

SEC. 17. Every officer charged with the execution of any writ of

capias ad respondendum, may be made a co-defendant in the suit in which such writ issued, and may defend the same, and shall be liable to the like judgment therein with the original defendant, in either of the following cases: First, when he shall return the writ executed, and shall not have taken, nor shall have the defendant according to the demand of the writ; or, second, where he fails to return the writ and the bail bond as required by this act; or, third, where the bail or the bond taken by him shall be adjudged insufficient, and the defendant being ruled thereto, fails to perfect the same.

SEC. 18. The clerk shall endorse on all writs of capias, and on all bail bonds, the time when they are returned by the officer charged with the execution of such writ.

SEC. 19. All exceptions to the sufficiency of bail or bail bonds, shall be determined at the term of the court to which the writ on which bail is taken is returnable.

SEC. 20. Every officer to whom any writ shall be delivered to be executed shall endorse thereon the time when such writ came to his hands, and shall make return thereof in writing, and shall sign his name to such return, and set out how and in what manner he executed the same.

SEC. 21. Whenever in the commencement or progress of any suit it shall be necessary to serve any notice on either party to such suit, such notice may be served either, first, by an officer authorized by law to serve original process of the court in which such suit is to be brought or may be pending; or, second, by any person who would be a competent witness upon the trial of such suit.

SEC. 22. Every such notice may be served in like manner as a writ of summons, and the return of such notice, when made by an officer, or when made by any other person, and verified by the affidavit of such person, shall be received as evidence of the facts therein stated, subject to be repelled by contrary proof; and such notice may be served either on the party, or his attorney of record.

SEC. 23. No attorney, solicitor or counsellor at law or in equity, clerk, sheriff or other person, concerned in the execution of any process, shall become bail in any civil or criminal case without leave of the court, which shall be entered of record.

SEC. 24. The court out of which any writ of *capias ad respondendum* may have been issued, or any judge thereof in vacation may reduce the amount for which bail may have been required; and the court at any time during the pendency of the writ, if satisfied that bail ought

not to have been required, may vacate the order allowing the capias, and may direct the bail bond to be cancelled, or the defendant to be discharged from imprisonment; and in every such case shall order his appearance to be accepted, and the case proceeded in in all things as if the original writ had been a summons.

SEC. 25. No application for relief under the provisions of the preceding section shall be allowed unless reasonable notice in writing, of such application, shall have been given to the plaintiff or his attorney.

SEC. 26. If the bail bond be forfeited, the plaintiff may have a scire facias thereon, which shall be directed to the proper officer in the county where the bail bond was taken, or to any county in which the defendant may be found, and shall be executed in the same manner as a writ of summons; and upon such writ being returned executed, such proceedings shall be had thereon, to final judgment, as in other civil cases.

SEC. 27. If two such writs be sued out in succession in the county in which the bail bond was taken, and both returned that the defendant cannot be found, such return to such second writ shall be equivalent to an actual service thereof.

SEC. 28. The bail of any defendant may surrender him, or such defendant may surrender himself, in discharge of his bail at any time before the return day of the process in an original action on the bail bond, and the writ returned executed, or before the return of a scire facias thereon, returned executed, or before the return day of a second scire facias thereon, so returned as to be equivalent to an actual service.

SEC. 29. Such surrender shall be made before the following court or officer: First, if the surrender is made during the pendency of the original suit, it shall be made before the court where such suit was brought, or before the judge or clerk thereof; second, if the surrender is made after final judgment has been given in the original suit, it may be made before the court in which judgment was given, or before the judge or clerk thereof.

SEC. 30. The proceedings to affect such judgment shall be as follows: First, there shall be produced to the court or officer authorized to accept such surrender, a certified copy of the bail bond, upon which the court or officer shall endorse an order that the defendant be committed to the custody of the sheriff of the county in which the suit is pending or the judgment rendered, in discharge of his bail, which order shall authorize the sheriff to commit and detain such defendant

until he be duly discharged. Second, upon producing to such court or officer the certificate of the sheriff, endorsed on the copy of the bail bond, that the defendant has been committed to and is in his custody, by virtue of such order of commitment, an order shall be made requiring the plaintiff to show cause before such court or officer, why the bail of such defendant should not be discharged from their liability. Third, upon proof of the service of such order, on the plaintiff or his attorney of record, such court or officer shall hear the allegations and proofs of the parties, and if no good cause be shown to the contrary, shall make an order that the bail of such defendant be discharged from their liability, as such bail, in the suit in which such bail bond was taken. Fourth, the copy of the bail bond, with the order of commitment made by the court or officer, the certificate of the sheriff, the rule to show cause, and the order of discharge, shall be filed in the office of the clerk of the circuit court, and until filed, the liability of such bail shall continue.

SEC. 31. If such surrender in discharge of bail be made before final judgment be given in the suit in which bail was taken, the sheriff may take new bail, in the same manner, and with like effect, as in the first instance; and if such surrender be made after final judgment, and the plaintiff shall not charge the defendant in execution, within twenty days after the filing the order of discharge in the clerk's office, as provided in this act, the defendant shall be discharged from imprisonment. Notwithstanding such discharge from imprisonment, after final judgment, the judgment shall continue in force against the property of the defendant, and execution against his property may be had in the same manner as if he had not been imprisoned.

SEC. 32. The plaintiff in the original suit shall not be entitled to bring any action or scire facias on the bail bond, until an execution against the property and body of the defendant shall have been issued to the county in which the bail was taken, and the same shall have been returned unsatisfied in whole or in part, and that the defendant could not be found within the county.

SEC. 33. In an action against the bail, either by an original summons or scire facias, they may plead that an execution against the body and property of the defendant in the original suit was not issued, as in this act required, or that it was not isued in time to be executed by the officer to whom it was directed, or that fraudulent or collusive means were used to prevent the service of such execution; and if such defence be established, it shall entitle the defendant to a verdict and judgment.

SEC. 34. When the defendant in the original suit shall die, at any time before the return day of any process served on the bail, or before the return day of a second writ of scire facias so returned as to be equivalent to an actual service, the court shall relieve the bail on the same terms as if they had surrendered their principal at the time of his death.

SEC. 35. When the principal shall be surrendered after the commencement of any suit against the bail, such bail shall pay all costs which shall have been incurred therein before the surrender.

SEC. 36. When any judgment shall be given against the bail, and they shall pay the whole or any part of such judgment, they shall be entitled, on motion, to judgment in the same court against the principal, for the amount so paid and costs ; and, on such motion, and in all suits for the recovery of such money, the bail shall recover interest thereon, at the rate of ten per centum per annum, from the time of such payment.

SEC. 37. When any officer shall be made co-defendant as in this act provided, and judgment shall be given against him, and he shall pay the amount of such judgment or any part thereof, such officer shall have the same remedy against the principal, as the bail may have in like cases ; and when such officer shall have been made co-defendant on account of the insufficiency of the bail by him taken, and judgment shall have been given against him, he may proceed against the bail on the bail bond, in the name of the plaintiff, to his own use.

SEC. 38. Suits by minors may be commenced and prosecuted either by the guardian of such minor, or by a next friend, appointed for him in such suit.

SEC. 39. The appointment of such next friend may be made by the court in which suit is intended to be brought, or by the judge or clerk thereof, and shall be made on the application of such minor, and the written consent of the person proposed to be next friend to such minor.

SEC. 40. The written consent of the person proposed as such next friend, and the order of appointment, shall be filed in the office of the clerk of the court where such suit is proposed to be brought, before any proceeding shall be had in the case.

SEC. 41. The guardian or next friend of any minor, who may commence or prosecute a suit, shall be responsible for the costs thereof.

SEC. 42. After the commencement of any suit against a minor

defendant, and the service of process upon him, the suit shall not be prosecuted any farther until a guardian be appointed for such minor.

SEC. 43. Such appointment may be made by the court, either on the application of the defendant or plaintiff, and the written consent of any competent person proposed as guardian.

SEC. 44. No person appointed guardian for the purpose of defending a suit against a minor, shall be responsible or liable for the costs of such suit, unless specially charged by the order of the court, for some personal misconduct in such suit.

SEC. 45. All suits brought in any of the circuit courts of this State, when the writ shall have been executed thirty days previous to the return day of such writ, shall be tried at the return term of such writ, unless good cause be shown for a continuance.

SEC. 46. Every defendant served with process fifteen days before the return day thereof, shall appear at the term to which such process is made returnable, and plead to the action; and when any process shall be served less than fifteen days before the return day thereof, he shall appear and plead, and the cause be tried at the next term after the return of such process.

SEC. 47. Where there are several defendants in a suit, and some of them are served with process thirty days before the return term thereof, and others of them are not served in due time, the plaintiff may either discontinue as to those not served, or not served in time, and proceed against those that are bound to appear; or he may continue the suit until the next term of the court, and take new process against those not served; and at such second term, the suit shall proceed against all the defendants who may have been served with process in due time, and no further delay shall be allowed, unless for good cause shown.

SEC. 48. No defendant against whom any suit may be discontinued in accordance with the provisions of the preceding section, shall be thereby exonerated from any liability in such suit, but may at any time be proceeded against, as if no such suit had been brought, and no such discontinuance entered as to such defendant.

SEC. 49. No essoigne or wager of law shall be allowed, nor shall any suit be delayed on account of the nonage of any of the parties.

SEC. 50. The parties to a suit may prosecute and defend the same in proper person, and by attorney, and it shall not be necessary for any warrant of attorney to be filed to authorize an attorney to appear in any court for either party, to an action brought therein, except in cases where it may be specially required by law.

SEC. 51. Every declaration, statement, or other pleading, shall be signed by the party filing the same, or his attorney; and the clerk shall endorse thereon the day on which it was filed, and if filed in term time, shall make an entry thereof on the minutes.

SEC. 52. Every plea to the merits shall be filed, where the writ has been served thirty days previous to the return day thereof, at or before the calling of the cause in its regular order on the docket, unless further time be given by the court for pleading, which shall in no case extend beyond the term.

SEC. 53. In all cases where the writ shall have been served less than thirty and more than fifteen days before the return day thereof, the defendant shall file his plea to the merits, on or before the third day of the term at which he is bound to appear, if the term so long continue; if not, then on or before the last business day of the term.

SEC. 54. Replications, in all cases where the original writ shall have been served thirty days before the return day thereof, and where the defendant shall have filed his plea to the merits at or before the calling of the cause in its regular order, shall be filed immediately, unless the court give further time for filing such replication.

SEC. 55. All subsequent pleadings shall be filed within such time, and in such manner as may be prescribed by the rules of practice of the court.

SEC. 56. A copy of every replication and subsequent pleading filed in vacation, shall be served on the adverse party or his attorney within fifteen days after the filing thereof.

SEC. 57. *Similiters* and joinders in demurrer, may be filed at any time, and without serving a copy thereof on the adverse party or his attorney.

SEC. 58. Courts upon good cause shown, and for the furtherance of justice, may extend the time prescribed in this act for filing any pleading, on such terms as shall seem just.

SEC. 59. No person shall be prejudiced by neglect of the ancient forms and terms in pleading, so that the matter fully appear in the process, declaration, petition, statement or other pleading.

SEC. 60. When any demurrer shall be filed in any action, and issue joined thereon, the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear, without regarding any defect or other imperfection in any process or pleading, so that sufficient appear in the pleadings to enable the court to give judgment according to the very right of the cause, unless such

defect or imperfection be specially expressed in the demurrer; but no defect or imperfection shall be set out in any demurrer, that would only be cause of special demurrer at common law.

SEC. 61. If a demurrer be filed in any action, the court shall amend every such defect or other imperfection in any process or pleading in the preceding section mentioned, other than those which the party demurring shall express in his demurrer.

SEC. 62. Demurrers may be joint and several, and may be sustained as to part of the pleadings demurred to, and overruled as to the residue, according to the circumstances of the case, with like effect in all respects, as if a separate demurrer had been filed to each pleading demurred to.

SEC. 63. All pleas in abatement and all other dilatory pleas not involving the merits of the cause, and all demurrers shall be determined during the term at which they are filed.

SEC. 64. Every person who may have cause of action against several persons, and entitled by law to but one satisfaction therefor, may bring suit jointly against all, or as many of them as he may think proper.

SEC. 65. An action at law may be maintained on any instrument of writing whether under seal or not, notwithstanding it may be lost or destroyed, and in every such action, no profert of such instrument shall be required, but the party shall allege the loss or destruction, as an excuse for the want of profert; and every such allegation shall be considered a material averment in the cause.

SEC. 66. In actions of debt or assumpsit to recover any money received contrary to the provisions of any statute of this State, it shall be sufficient for the plaintiff, without setting forth the special matter, to allege in his declaration, that the defendant is, or that his testator or intestate was indebted to the plaintiff according to the provisions of such statute, naming the subject matter, or referring to the statute in some general terms.

SEC. 67. If any action of trover or detinue be brought for the recovery of any property received contrary to the provisions of any statute, it shall be sufficient for the plaintiff to set forth in his declaration that such property was converted by the defendant, or by his testator or intestate, or is unlawfully detained by the defendant, contrary to the provisions of such statute, referring to the same as prescribed in in the preceding section.

SEC. 68. The plaintiff in replevin, and the defendant in all other

actions, may plead as many several matters, whether of law or fact, as he may think necessary for his defence.

SEC. 69. Persons sued as executors or administrators shall not be made personally liable in any action, nor shall persons sued as executors of their own wrong be made liable to a greater extent than they otherwise would be, by reason of any such person having pleaded any false plea.

SEC. 70. When any action shall be brought on any specialty or judgment, or where a *scire facias* is brought upon a judgment, the defendant may plead payment of the amount due on such specialty or judgment, in bar of such action or writ.

SEC. 71. In every action brought against any public officer of this State, or against any person specially appointed according to law, to execute the duties of any such office, for or concerning any act done by such officer or person, by virtue or reason of his office; and in an action against any other person, who, by the command of such officer or person, or in aiding or assisting him, may do any thing touching the duties of such office or appointment, the defendant may plead the general issue, and give the special matter in evidence, giving the adverse party notice in writing of the special matter intended to be offered in evidence.

SEC. 72. In every action brought against any person for an act done by authority of any statute of this State, the defendant may plead not guilty, or make avowry or justification of the act done, alleging therein that the act was done by authority of such statute, naming the subject matter thereof, or referring thereto in some other manner, with certainty to a common intent, without expressing any matter expressed in such statute.

SEC. 73. To such plea the plaintiff may reply that the defendant did the act complained of without authority of any statute of this State, and upon the issue so joined, the whole matter may be given in evidence by both parties.

SEC. 74. In any suit founded on any instrument or note in writing, under the seal of the person charged therewith, the defendant may, by special plea, impeach, or go into the consideration of such writing, in the same manner as if such writing had not been sealed.

SEC. 75. All pleas impeaching the consideration of any such instrument or note in writing, whether sealed or not, shall be supported by the affidavit of the defendant, or some other person for him, stating that the facts set forth in such plea are true, as far as detailed as such,

from his own knowledge, and that he believes them to be true as far as related from the information of others.

SEC. 76. Whenever it shall become necessary to the attainment of justice to allow a plaintiff to reply several matters to the plea of a defendant, or allow a defendant to rejoin several matters to the replication of the plaintiff, the court in which the action may be pending, on the application of the party desiring so to reply or rejoin, may allow the same to be done.

SEC. 77. If the defendant shall fail to file his plea, or other pleading within the time prescribed by this act, or the rules of practice of the court, an interlocutory judgment shall be given against him by default; but such judgment may be set aside for good cause shown, at any time before the damages shall be assessed, and on such terms as may be just.

SEC. 78. If the plaintiff shall fail to file his replication within the time prescribed by this act, or the rules of practice of the court, and to serve the adverse party with a copy thereof when the same is required, judgment of *non pros.* shall be entered against him; but such judgment may for good cause shown, be set aside at the term at which it may be entered, upon such terms as may be just.

SEC. 79. Where there are several defendants in a suit, and some of them appear and plead, and others make default, an interlocutory judgment by default may be entered against such as make default, and the cause may proceed against the others, but only one final judgment shall be given in the action.

SEC. 80. Whenever an interlocutory judgment shall be rendered for the plaintiff by default, or upon demurrer, in any suit founded on any instrument of writing, and the demand is ascertained by such instrument, the court shall assess the damages, and final judgment shall be given thereon.

SEC. 81. In all other cases of such interlocutory judgments, the damages shall be assessed by a jury empanelled in the court for that purpose, and every such inquiry of damages shall be made at the term next after the term at which such interlocutory judgment shall be rendered, unless the court direct it to be made at the same term.

SEC. 82. When there are several issues of law and of fact in any suit, the issues of law shall be first determined.

SEC. 83. Every suit that shall not be otherwise disposed of according to law, shall be continued at the term at which the defendant is bound to appear, until the next term thereafter; and at such second

term, every such suit shall be determined, unless for good cause shown.

SEC. 84. Every court of record in which any suit may be pending, may at the first term, for good cause shown, continue such suit until the next term of such court; and every continuance granted shall be at the cost of the party applying for such continuance, unless otherwise ordered by the court.

SEC. 85. No suit shall be twice continued for the same cause.

SEC. 86. Every application for the continuance of a cause by either party, shall be accompanied by the affidavit of the applicant, or some other person for him, setting forth that a material witness is absent, (naming him,) and stating what he expects to prove by such absent witness, and what exertions have been made to procure the attendance of such witness, and that the same facts cannot be established by any other witness, and that he has reason to believe that he can procure the attendance of such witness by the next term of the court, or that his testimony can be procured by that time, and that the application is not made for delay, but that justice may be done.

SEC. 87. If either party continue a cause at the second term of the court after the return of the writ, the party continuing shall be bound to be ready for trial when the cause is called, at the term to which it may be continued.

SEC. 88. Every court of record shall have power to compel any party to a suit pending therein, to produce any books, papers and documents in his possession or under his control relating to the merits of such suit, or to any defence therein.

SEC. 89. To entitle the party to the production of any such books, papers and documents, he shall present a petition verified by the affidavit of himself or some other person, to the court, or the judge thereof in vacation, upon which an order may be made by such court, or judge, for the production of such books, papers and documents, or that the party show cause why the prayer of the petition should not be granted.

SEC. 90. Every such order may be vacated by the court or judge granting the same; first, upon satisfactory evidence that it ought not to have been granted; second, upon the party required to produce such books, papers and documents, denying on oath the possession or control thereof.

SEC. 91. If the party neglect to obey such order for the production of books, papers and documents within such time as the court or judge shall prescribe for that purpose, the court may nonsuit him, or

strike out any plea or notice of set-off, or debar him from any particular defence in relation to which, such books, papers and documents were required to be produced.

SEC. 92. The power of the court to compel such production of books, papers and documents, shall be confined to the remedies in this act provided; and shall not authorize any other proceeding against the person or property of the party refusing to comply with the order of the court or judge.

SEC. 93. Either party to a suit in any court of record shall be entitled to a discovery from the other party of all matters material to the issue in such suit, in all cases where the same party would, by the rules of equity, be entitled to a discovery in a court of equity, in aid of such suit.

SEC. 94. In order to entitle a party to a discovery, he shall present a petition verified by the affidavit of himself, or some other person, to the court, or the judge thereof in vacation, setting forth the matter upon which his claim to a discovery is founded, the facts sought to be discovered, and such interrogatories in relation thereto, as he may think necessary to exhibit, in order to attain a full discovery.

SEC. 95. The court, or the judge thereof in vacation, may grant an order, endorsed on such petition, requiring the party from whom the discovery is sought, to answer the interrogatories exhibited in the petition, or such of them as shall appear to the judge or court ought to be answered, or that he show good cause why he should not answer the same, and may order the trial of the suit to be stayed until the order be complied with or vacated.

SEC. 96. The petition and order to answer shall be filed in the office of the clerk of the court, and a copy thereof served on the party whose answer is sought, and the same proceedings shall be had on the petition, and the court may exercise the same powers therein, as would be had or might be exercised in a court of equity, on a bill of discovery, in aid of a suit at law.

SEC. 97. The answer of the party to the interrogatories shall be evidence in the trial of the suit in the same manner and with like effect as an answer to a bill in equity for a discovery; and if the party shall neglect or refuse to answer the interrogatories, and the petition shall according to proceedings in equity, be finally taken as confessed, the facts stated in the petition, and therein sought to be discovered, may be given in evidence on the trial, as facts admitted by the party from whom the discovery is sought.

SEC. 98. All issues of fact joined in any suit at law, in any court of record, shall be tried either by the court, by jury, or by arbitrators. First, the trial shall be by the court, when neither party shall demand a trial by jury; second, the trial shall be by a jury, when either party shall demand such trial; third, it shall be tried by arbitrators, on the agreement of the parties to refer the matter in dispute to arbitrators.

SEC. 99. In all trials by jury each party shall be entitled to three peremptory challenges.

SEC. 100. No witness, or person summoned as a witness in any civil cause, and no person who has formed and expressed an opinion concerning the matter in controversy in any such suit, which may influence the judgment of such person, shall be sworn in the same cause as a juror.

SEC. 101. When there are several counts in the declaration, and one or more of them imperfect, the plaintiff at any time before the jury is sworn, or the trial submitted to the court, may move the court to strike out such imperfect counts.

SEC. 102. When any declaration, petition, statement or other pleading, shall be founded on any instrument or note in writing, whether the same be under seal or not, charged to have been executed by the other party, and not alleged therein to be lost or destroyed, such instrument shall be received in evidence, unless the party charged with having executed the same, deny the execution of such writing by plea, supported by the affidavit of the party pleading; which affidavit shall be filed with the plea.

SEC. 103. When such instrument or note in writing is charged to have been executed by any testator or intestate, it shall be received in evidence, and the party shall not be required to prove its execution, unless some suspicion be cast on it by the affidavit of the executor or administrator of such testator or intestate.

SEC. 104. The pleas of *nil debet* and *non assumpsit* may be filed in all actions of debt or assumpsit founded on any instrument of writing, not under seal; but such pleas shall not put in issue the execution of such writing, unless the same shall be verified by affidavit.

SEC. 105. In all actions of debt founded on any note or instrument in writing, the defendant shall be permitted to plead payment at or after the day on which the debt became due and payable, or both.

SEC. 106. Whenever in the progress of any trial in any of the circuit courts, in a civil suit, either party shall except to the opinion of the court, and shall reduce his exceptions to writing, and pray the court

to allow and sign the same, the judge of the court, if such bill be true, shall sign the same; and if such judge refuse to sign any bill of exceptions, he shall certify thereon the cause of such refusal.

SEC. 107. If any judge shall refuse to sign a bill of exceptions, such bill may be signed by three bystanders, who are reputable inhabitants of the State, and the court shall permit such bill to be filed; and every bill of exceptions signed by the judge or bystanders, and filed in the court, shall form a part of the record in the cause in which the same may be filed.

SEC. 108. When any judge shall refuse to permit a bill of exceptions signed by bystanders to be filed, and shall have certified such bill to be untrue, either party in the suit may take affidavits, giving the adverse party notice of the time and place of taking such affidavits, not exceeding five in number, in relation to its truth; and such affidavits when taken, shall be filed in the clerk's office, within five days after the trial of the cause; and on appeal and writ of error, copies of such affidavits shall be annexed to, and form a part of the record in the cause.

SEC. 109. The supreme court shall admit as a part of the record of the cause, every bill of exceptions taken therein, upon its appearing to the satisfaction of the court, that the truth of the case is fairly stated in such bill, that the same was taken according to law, and that the court refused to permit such bill to be filed; and the truth of every such bill of exceptions shall be tried by the affidavits required by this act to be taken and filed in the clerk's office.

SEC. 110. No plaintiff shall be permitted to suffer a nonsuit on trial after the jury have retired from the bar, or the cause has been submitted to the court.

SEC. 111. Whenever a party to any suit shall have been permitted to prove by his own oath, the loss of any instrument of writing, in order to admit of other proof of its contents, the adverse party may also be examined by the court on oath, to disprove its loss, and account for such instrument.

SEC. 112. The court in which any action may be pending, shall have power to amend any process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as may be just, at any time before final judgment rendered therein.

SEC. 113. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the rules of practice of the court, to answer the pleading so amended.

SEC. 114. Process by which an action shall have been commenced, and on which the defendant may have been arrested, shall not be amended in the return day thereof.

SEC. 115. After judgment rendered in any cause, any defects and imperfections in matter of form contained in the record, pleadings, process, entries, returns, or other proceedings in such cause may be amended and rectified by the court in affirmance of the judgment, and the judgment shall not be reversed or annulled therefor ; and any variance in the record from any process, pleading or proceeding had in such cause, shall be reformed and amended according to such original process, pleading or proceeding.

SEC. 116. All returns made by any sheriff or other officer, or by any court or subordinate tribunal, to any court, may be amended in matter of form by the court to which such returns may be made, in their discretion, as well before as after judgment.

SEC. 117. Any imperfection or defect in the award of any venire, or any omission to award such venire on the record, may be amended or supplied by the court in which such record is.

SEC. 118. When a verdict shall have been rendered in any cause, the judgment thereon shall not be arrested or stayed, nor shall any judgment by confession be reversed, impaired or in any way affected by reason of any of the following imperfections, omissions, defects, matters or things in the pleadings, process or record: First, for the want of any writ original or judicial. Second, for any default or defect of process, or for misconceiving any process, or directing the same to the wrong officer, or for want of any suggestion for awarding process, or for any insufficient suggestion. Third, for any imperfect or insufficient return of the sheriff or other officer, or that the name of such officer is not actually signed to any return made by him. Fourth, for any variance between the original writ, plaint, and declaration, or either of them. Fifth, for any mispleading, miscontinuance, discontinuance, insufficient pleading or misjoinder of issue. Sixth, for want of a warrant of attorney by either party, except in judgments of confession by attorney, or where the same may be expressly required by law. Seventh, for any party under twentyone years of age having appeared by attorney, where the judgment is in his favor. Eighth, for want of any allegation or averment, on account of which a special demurrer would have been sustained at common law. Ninth, for omitting any allegation or averment, without which the jury ought not to have given a verdict. Tenth, for any mistake in the name of any party or person,

or in any sum of money, or in the description of any property, or in reciting or stating any day, month or year where the correct name, time, sum or description shall have been once rightfully alleged in any of the pleadings or proceedings. Eleventh, for the mistake of the name of any officer or juror. Twelfth, for the want of a venue or the right venue, if the cause was tried by a jury of the proper county. Thirteenth, any informality in entering judgment or making up the record thereof, or in any continuance, or other entry upon such record. Fourteenth, for any other default or negligence of any clerk or officer of the court, or of the parties, their counsellors or attorneys, by which neither party shall have been prejudiced.

SEC. 119. The omissions, imperfections, defects and variances, in the preceding section enumerated, and all others of a like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties on the trial, shall be supplied and amended by the court when the judgment shall be given, or by the court into which such judgment may be removed by writ of error or appeal.

SEC. 120. No process, pleading or record shall be amended or in any manner impaired, by the clerk or other officer of the court, or by any other person, without the order of the court having the control of such process, pleading or record.

SEC. 121. The provisions of the preceding nine sections shall extend to all actions in courts of law, and to all suits for the recovery of any debt due the State, or for any debt, duty or revenue, belonging to the State, and also to all actions for penalties under any statute, to all writs of mandamus and prohibition, to all informations in the nature of a *quo warranto*, to writs of *scire facias*, and the proceedings thereon; but shall not extend to indictments, or informations for any criminal matter, and the proceedings thereon.

SEC. 122. All motions for new trials, and in arrest of judgment, shall be made within four days after the trial, if the term of the court shall so long continue; and if not, then before the end of the term; and every such motion shall be accompanied by a written specification of the reasons upon which it is founded.

SEC. 123. No motion for a new trial shall be allowed after a motion in arrest of judgment.

SEC. 124. Not more than two new trials shall be allowed to either party, except the jury shall have erred in matter of law, or where the jury have been guilty of some misconduct.

SEC. 125. The costs of all new trials may either abide the event of the suit, or shall be paid by the party to whom such new trial may be granted, according to the order of the court, to be made at the time of granting such new trial.

SEC. 126. When any judgment shall be arrested, the court shall allow the proceedings in which the error was, to be amended, in all cases where the same amendment might have been made before trial, and the cause shall again proceed according to the practice of the court; but the party in whose proceedings the first error was committed, shall pay the costs incurred thereby.

SEC. 127. When there are several counts in a declaration, and entire damages be given, the verdict shall be good, notwithstanding one or more of such counts may be defective.

SEC. 128. If, on an issue concerning several things in one count in an action of detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be debarred of his title to the things omitted.

SEC. 129. No judgment shall be set aside in any of the courts of this State on motion, unless such motion shall be made within four days after the rendition of such judgment, if the term of the court so long continue; if not, then before the end of the term.

SEC. 130. All motions for new trials, in arrest of judgment, and to set aside a judgment, shall be determined at the term of the court at which any such motion may be made.

SEC. 131. All judgments rendered in any of the circuit courts of this State, shall be a lien on the lands and tenements of the defendant, or the party against whom any judgment may be rendered, for the term of five years from the rendition of such judgment, and no longer.

SEC. 132. Whenever several suits shall be pending in the same court, by the same plaintiff, against the same defendant, for causes of action which may be joined, or where several suits are pending in the same court, by the same plaintiff, against several defendants, which may be joined, the court in which the same may be prosecuted, may, in its discretion, order such suits to be consolidated into one action.

SEC. 133. When any plaintiff shall bring in the same court, several suits against the same defendant or defendants for causes of action that may be joined, the plaintiff shall recover only the costs of one action; and the costs of the other actions shall be adjudged against him, unless sufficient reason appear to the court for bringing several actions.

SEC. 134. The plaintiff, or his attorney, may dismiss any suit

pending in any of the courts of this State, except actions of replevin, in vacation, in the office of the clerk, on the payment of all costs that may have accrued therein.

SEC. 135. The several courts in this State may appoint interpreters when necessary, and cause them to be sworn truly to interpret.

SEC. 136. Papers read in evidence, although not under seal, may be carried from the bar by the jury.

SEC. 137. Any person, for a *bona fide* debt, may, without process, confess judgment by himself or attorney; and, in all cases of confession of judgment by an attorney, the warrant of attorney shall be filed.

SEC. 138. The party in whose favor the judgment may be confessed, or some other person for him, shall file in the office of the clerk of the circuit court an affidavit that the debt is justly due, and that there is no fraud in the transaction, previous to entering the confession.

SEC. 139. Every judgment by confession, either with or without process, shall operate as a release of errors in entering up the judgment, and making a record thereof.

SEC. 140. The several clerks of the circuit courts of this State, shall have full power and authority to take and enter up judgments by confession, in vacation, made either by the party to be charged, or his attorney, and may issue execution thereon without the intervention of the court, and for that purpose, and for all other purposes in this or any other act mentioned, where clerks of courts are required or authorized to do any judicial act, they shall be considered and regarded as judicial officers.

SEC. 141. The party aggrieved by any final judgment or decision of any circuit court in any civil case, may make his appeal to the supreme court.

SEC. 142. But no such appeal shall be allowed, unless, first, it be made during the term at which the judgment or decision complained of was given; and, second, the appellant or his agent shall during the same term, file in the court an affidavit, stating that such appeal is not made for vexation or delay, but because the affiant verily believes, that the appellant is aggrieved by the decision or judgment of the court.

SEC. 143. Upon the appeal being applied for according to the foregoing provisions, the court shall make an order allowing it, and such allowance thereof shall stay the execution in the following cases and no other: First, when the appellant shall be an executor or ad-

ministrator, and the action is by or against him as such; second, when the appellant, or some other person for him, together with two sufficient securities, to be approved by the court, shall, during the term at which the judgment appealed from was rendered, enter into a recognizance to the opposite party, in a penalty sufficient to secure whatever of debt, damages and costs have been recovered by such judgment, together with the interest that may accrue thereon, and the costs and damages that may be recovered in the supreme court upon the appeal, conditioned that the appellant will prosecute his appeal with due diligence to a decision in the supreme court, and that if the judgment appealed from is affirmed, or his appeal dismissed, he will pay whatever of debt, damages and costs have been recovered against him by the judgment of the circuit court, together with the interest that shall accrue thereon, or that he will otherwise perform the judgment of the circuit court and that he will also pay the costs and damages that may be adjudged against him, in the supreme court upon his appeal.

SEC. 144. The several clerks of the circuit courts shall, within twenty days before the commencement of each term of the court, make out a docket of all causes, both civil and criminal, in which an issue of fact is to be tried, an inquiry of damages to be made, a special verdict, agreed case, demurrer or other matter of law, to be argued at such term; and shall arrange such causes or indictments, upon the docket, in the same order in which the original process was issued, except that all criminal matters shall be first set down; and a proper portion of the causes shall be set for each day the term is supposed to continue; and every clerk shall, within the time before specified, put up in some convenient place in his office a list of all causes specified in this section, distinguishing therein the day on which each cause is to be tried, and shall keep such list so affixed, until the end of such term, for the inspection of the parties litigant, and their attorneys.

SEC. 145. Every clerk of the circuit court, upon the demand of any party or his attorney, and upon the payment of the legal fee therefor, shall issue subpœnas for witnesses to appear and testify on the day for which the cause is set, in which the subpœnas are demanded; and every clerk who shall neglect or refuse to make out such docket, or to set and keep up such list of causes, or to issue subpœnas according to the provisions of this act, shall on motion be fined by the court in any sum not exceeding one hundred dollars.

[Approved: December 18, 1837.]

CHAPTER 117.

PRACTICE IN SUPREME COURT.

SECTION

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SEC. 1. Writs of error upon any final judgment or decision of any circuit court, shall issue of course, in all cases, out of the supreme court in vacation as well as in term time, subject to the regulations prescribed by law.

SEC. 2. All writs of error upon any judgment or decision of any of the circuit courts of this State, shall be brought within three years after the rendering of such judgment, or making of such decision, and not after.

SEC. 3. If any person who may be entitled to a writ of error, shall be within the age of twentyone years, a married woman, of unsound mind, imprisoned, or absent from the United States, such person may sue out such writ of error at any time within three years after such disability is removed.

SEC. 4. Writs of error may be brought by any of the attorneys for the State, in the name and on the behalf of the State, in like manner as by individuals, except when it may be otherwise provided by law.

SEC. 5. If a judgment shall be rendered against several persons, and one of them die, a writ of error may be brought thereon by the survivors.

SEC. 6. If there be several persons against whom any judgment may have been rendered, and who are entitled to bring a writ of error there on, living at the time of bringing such writ, they shall all join in the writ, except where it may be otherwise provided by law; and if any are omitted, the writ shall be quashed on motion of the defendant in error, made at any time before joinder in error, upon due proof of the facts, unless one or more of such persons be allowed by the court to proceed.

SEC. 7. To the allegation that there are other persons living, who ought to join in such writ of error, if it be established or admitted, the party prosecuting such writ of error may answer, by due proof on affidavit, that any of such persons not joined, are incapable of consenting to join in such writ, by reason of insanity or imbecility of mind, or that their consent could not be had by reason of their absence from this State: and if the court shall be satisfied of the truth of such answer, such party shall be allowed to prosecute such writ of error without joining such persons, in the same manner as if they were joined.

SEC. 8. To such allegation, the party prosecuting the writ may also answer by due proof on affidavit, that application has been made to the persons not named in the writ, to join therein, and that they refused, and in such case the court shall stay further proceedings on

such writ on motion to quash the same, until an order shall have been duly served on the person so refusing as hereinafter provided.

SEC. 9. The court shall thereupon cause an order to be entered on its record, directing the person so refusing to join in such writ to appear in such court within such time as shall be prescribed therein, and join in such writ of error and the proceedings thereon, or to be forever precluded from bringing another writ of error on the same judgment.

SEC. 10. A copy of such order shall be served on the parties named therein, at least ten days previous to the time of appearance therein specified, in like manner as an original summons.

SEC. 11. Upon the application of any person named in such order, he may be permitted to join in such writ of error and the proceedings thereon, upon the payment of the costs of the proceedings to bring him into court, including the motion to quash the writ of error, if it shall appear that he refused to join in such writ and without just cause; and the writ and the proceedings shall be amended by inserting the name of such person.

SEC. 12. If any person named in such order do not appear by the time therein specified and join in such writ of error, on due proof of the service of such order the default of such person shall be entered, and he shall thereby be forever precluded from bringing any writ of error on the same judgment, and the cause shall proceed in the same manner as if such person had been named in such writ and the proceedings thereon.

SEC. 13. When the name of any person out of this State, or incapable of giving consent to the bringing of a writ of error, shall be omitted in any such writ, and the cause shall proceed without such name, the rights of such person shall not be impaired by the judgment on such writ, but he may bring his writ of error in the same manner separately as if no such former writ had been brought.

SEC. 14. Any person who ought to join in any writ of error, may be permitted to do so on his application, on such terms as the court shall impose, and the writ and proceedings shall be amended by inserting his name, and the cause shall be proceeded in as in other cases.

SEC. 15. No writ of error shall stay the execution, unless the supreme court or some judge thereof in vacation shall make an order allowing such writ of error to stay the execution; and no such order shall be made by the clerk of said court in vacation, after the expiration of ninety days from the rendering of the judgment or decision complained of.

SEC. 16. No order allowing a writ of error to stay the execution, shall be made by the supreme court, or any judge, or the clerk thereof in vacation, except in the following cases: First, where the plaintiff in error was in the original action an executor or administrator, and such action was by or against him as such; or, second, where the plaintiff in error, or some other responsible person for him, together with sufficient security to be approved by the judge or clerk, shall enter into recognizance before such court, judge or clerk to the adverse party in a penalty sufficient to secure whatever debt, damages and costs have been recovered by the judgment complained of, together with the costs and damages that may be recovered in the supreme court, conditioned that the plaintiff in error will prosecute such writ with effect, and pay the money that may therein be adjudged against him by the supreme court, or otherwise abide the judgment of such court therein.

SEC. 17. The court or officer allowing a writ of error to stay the execution, shall cause an order to that effect to be endorsed on the writ, under the hand of the clerk, when the same is made in term time, or under the hand of the judge or clerk making the same, when it is made in vacation.

SEC. 18. If no execution be issued, the exhibiting of such writ of error so endorsed, to the adverse party or his attorney of record, or the clerk of the circuit court where the judgment or decision complained of was rendered, shall stay the issuing of any writ of execution on such judgment or decision.

SEC. 19. If any execution shall have been issued and not fully executed, upon the exhibition of such writ of error to the officer having such execution in charge, such officer shall proceed no further in the execution thereof, and shall return the writ together with the reason of his not proceeding to the final execution thereof.

SEC. 20. Every person suing out a writ of error, shall cause a notice thereof in writing to be served on the adverse party or his attorney of record ten days before the return day of such writ, and if such notice be not served, the judgment of the circuit court shall be affirmed, unless good cause for such failure be shown.

SEC. 21. All writs of error shall be returned by the clerk of the circuit court, to which the same may be addressed, and the return shall be signed by him, and be under the seal of such court.

SEC. 22. If any clerk shall fail to make return of any writ of error

to the supreme court, he shall be deemed guilty of a contempt of such court, and may be punished accordingly.

SEC. 23. All appeals which may have been taken thirty days before the first day of the next term of the supreme court, shall be returnable to such term; and all appeals which may be taken less than thirty days before the first day of such next term, shall be returnable to the second term thereafter.

SEC. 24. The appellant shall cause to be filed in the office of the clerk of the supreme court, at least ten days before the first day of such court, a transcript of the record and proceedings in the cause, and if he fail to do so and the appelle produce in court the certificate of the clerk of the circuit court that an appeal has been entered and a recognizance given as required by law, the court shall affirm the judgment of the circuit court, unless good cause to the contrary be shown.

SEC. 25. On appeals and writs of error the appellant and plaintiff in error shall assign errors on or before the fourth day of the term to which such appeal or writ of error is returnable; and in default of such assignment of errors, the appeal or writ of error shall be dismissed or the judgment affirmed, unless good cause for such failure be shown.

SEC. 26. Joinders in error shall be filed within three days after the assignment of errors.

SEC. 27. If there be several appellants or plaintiffs in error, and one or more of them die before errors are assigned, such death shall be suggested by the survivor, and the errors shall be assigned by him; and if one or more defendants die before joinder in error, such death shall in like manner be suggested by the survivor, and he shall plead to the assignment of errors.

SEC. 28. If there be two or more appellants or plaintiffs and one or more of them die after the assignment of errors, or one or more of several appellees or defendants in error, the appeal or writ of error shall not thereby abate, but in either of such cases, such death shall be suggested on the record, and the cause shall proceed at the suit of the surviving appellant or plaintiff in error, or against the surviving appellee or defendant in error.

SEC. 29. If all the appellants or plaintiffs in error die after the appeal taken or writ of error brought, and before judgment rendered thereon, the executor or administrator of the last surviving appellant or plaintiff, or the heirs or devisees of the appellant or plaintiff, in cases where they would be entitled to bring writs of error or prosecute an

appeal, may be substituted for such appellant or plaintiff, and the cause shall proceed at their suit.

SEC. 30. If all the appellees or sole appellee, or if all the defendants, or sole defendants in a writ of error die after an appeal is entered or writ of error brought, and before judgment thereon, the executors or administrators of such appellees or defendants may be compelled to become parties and join in error in like manner as in an original suit.

SEC. 31. If a female appellant or plaintiff marry after appeal taken or writ of error brought, her husband may be joined with her on his application, and his name shall be entered on the proceedings.

SEC. 32. If a female appellee or defendant in error marry after the appeal taken or writ brought, and before judgment, her husband may be made a co-defendant on his application, or on the application of the adverse party.

SEC. 33. In all appeals and writs of error, each party shall before the argument of the cause, make out and furnish each judge with a clear and concise statement of the case, and the points intended to be insisted upon in the argument.

SEC. 34. No exception shall be taken in an appeal or writ of error to any proceedings in the circuit court, except such as shall have been decided by such court, or such as shall appear on the face of the record.

SEC. 35. No judgment shall be reversed, impaired or affected for any defect of form contained in the record, pleadings, process, entries, returns, or other proceedings therein, which by law might be amended by the court in which such judgment was rendered ; but such defects and imperfections shall be supplied and amended by the supreme court or shall be deemed to have been supplied and amended.

SEC. 36. In all appeals and writs of error, the supreme court shall examine the record, award a new trial, reverse or affirm the judgment or decision of the circuit court, or give such judgment as such court ought to have given, as may seem most agreeable to law.

SEC. 37. When the facts in a special verdict are insufficiently found, the supreme court may remand the cause, and order another trial to ascertain the facts.

SEC. 38. Upon the affirmance of any judgment or decision, the supreme court may award the appellee or defendant in error such damages, not exceeding ten per centum on the amount of the judgment complained of, as may be just and proper.

SEC. 39. The supreme court upon the determination of any ap-

peal or writ of error, may award execution to carry the same into effect or may remand the record with the decision of such court thereon to the circuit court in which the cause originated, and order such decision to be carried into effect.

SEC. 40. Whenever by the decision of any circuit court a construction may be given to any penal or other statute, every act done in good faith in conformity with such construction, after the making of such decision, and before the reversal thereof by the supreme court, shall be so far valid that the party doing such act shall not be liable to any penalty or forfeiture for any such act, that shall have been adjudged lawful by such decision of the circuit court.

SEC. 41. All the provisions of this act relative to appeals and parties thereto, shall extend to all appeals from decrees and decisions in chancery cases in all respects, the same as from judgments and decisions in suits at law.

SEC. 42. If any judgment of the circuit court shall be reversed by the supreme court on writ of error or appeal, and such judgment may have been carried into effect before the reversal thereof, such defendant may recover from the plaintiff in such judgment the full amount paid thereon, including costs, by an action of debt or on the case for so much money had and received to his use.

SEC. 43. It shall be the duty of the judges of the supreme court in all cases, to reduce their opinions to writing, and deliver the same to the clerk of said court, whose duty it shall be to enter such opinions at large in a book to be by him kept for that purpose.

SEC. 44. When any judge of the supreme court shall dissent from the opinion of the court in any case, such judge shall reduce his reasons for so dissenting to writing, and the same shall be recorded with the opinion of the court.

[Approved: December 1, 1837.]

CHAPTER 118.

PRISON BOUNDS.

SECTION
1. County lines to be prison bounds.
2. How long prisoner to remain in bounds, and his expenses how paid.
SECTION
3. In suit on bond for passing over bounds, what judgment shall be rendered.

SEC. 1. The county lines shall be the prison bounds in the respective counties in this State.

SEC. 2. No person who shall have been committed to jail, or taken in execution for any debt, shall be permitted to remain in the bounds for a longer time than one year, and in all cases the person taking the bounds shall pay the expenses incurred for his board.

SEC. 3. If suit be brought on the bond, for passing over the bounds, and judgment be rendered thereon, such judgment shall be for the amount of the demand with interest and costs.

[Approved: February 28, 1838.]

CHAPTER 119.

PRIVATE NOTES.

SECTION
1. Not to be issued as a circulating medium.
2. Penalty for issuing, &c.
SECTION
3. Penalty for passing, &c.
4. Not to affect bank notes, except for less than five dollars.

SEC. 1. No person or persons unauthorized by law shall intentionally create or put in circulation, as a circulating medium, any note, bill, bond, check or ticket, purporting that any money or bank notes will be paid to the receiver, holder or bearer, or that it will be received in payment of debts or to be used as a currency or medium of trade in lieu of money.

SEC. 2. If any person or persons shall issue, put into circulation, sign, countersign or endorse any such note, bill, bond, check or ticket, he, she or they so offending, shall be indicted, and being thereof convicted shall be fined not less than fifty, nor more than three hundred dollars, and be imprisoned not exceeding twelve months.

SEC. 3. If any person or company vend, pass, receive or offer in payment any such note, bill, bond, check or ticket, he, she or they, so offending, shall forfeit the sum of fifty dollars, to be recovered by action of debt with costs to the use of any person who will sue for the same before any justice of the peace of the county in which the party offending may be found.

SEC. 4. The preceding section shall not affect any note issued by any bank authorized by law in the United States, except notes for a less sum than five dollars.

[Approved : November 25, 1837. In force, March 1, 1838.]

CHAPTER 120.

PUBLIC ADMINISTRATORS.

SECTION
1. Who shall be in each county.
2. Duty of as to estates of deceased persons.
3. To make inventory, account, &c.
4. Regular letters granted, to account, pay over, &c.
5. Duty of justices and constables in giving information to.
6. To institute suit, and how.
7. Responsible, with his securities, for misconduct.
8. When to give security like other administrators.

SEC. 1. The sheriff in each county of this State shall, by virtue of his office, be public administrator in and for his county.

SEC. 2. It shall be the duty of each public administrator to take into his charge all the estate, of every kind, of deceased persons in his county, in the following cases : First, where a stranger dies intestate in his county, without relations, or dies having a will, and the executor named is absent, or fails to qualify and enter into bond, as required by law ; second, where persons die intestate without any known heirs,

and administration is not taken by some responsible person; third, where persons unknown are found dead or die in his county; fourth, where money, property, papers, or other estate, is exposed to loss and damage, and no other person administers on the same; fifth, where the estate of any person who may have died elsewhere, is left in his county, liable to be wasted, injured or lost, or is not in the lawful custody of some responsible person; sixth, in all other cases where the court of probate shall order him to take possession of any estate to prevent it from being injured, wasted, or purloined.

SEC. 3. It shall be the duty of each public administrator to make a true and perfect inventory of all estates taken into his possession, and administer and account for the same, as near as circumstances will permit, according to the law prescribing the duties of administrators, subject to the control and direction of the court of probate.

SEC. 4. If, at any time, letters testamentary or of administration be regularly granted on any estate in the hands and under the control of the public administrator, he shall, under the order of the court of probate, account for, pay, and deliver, to the executor or administrator thus appointed, all the money, property, and estate, of every kind in his possession.

SEC. 5. It shall be the duty of all justices of the peace and constables, in their respective counties, to inform the public administrator of all property and estates known to them, which are liable to waste or injury, and which by law ought to be in the possession of the public administrator.

SEC. 6. The public administrator shall institute all manner of suits that may be necessary to recover the property, debts, papers, or other estate of the deceased, in the same manner as if letters of administration were actually granted to him, styling himself, in all such suits, the public administrator of the proper county.

SEC. 7. Every sheriff and his securities shall be responsible, on his official bond, for misconduct in discharging his duties of public administrator.

SEC. 8. When any estate shall amount to three thousand dollars and upwards, the probate court shall require the public administrator to give security as in other cases of administration.

[Approved: March 1, 1838.]

CHAPTER 121.

PUBLIC RECORDS.

SECTION
1. Officer in charge of resigning, &c., how to be disposed of.
2. Officer dying, how disposed of.
3. Penalty for failure, how recovered, and damages sustained thereby.
4. On such failure, who may issue warrant to seize and deliver over such records, &c.
5. Person holding over, to be first served with notice, before warrant issues.

SECTION
6. Power of officer executing such warrant.
7. Penalty for officer refusing to serve such warrant, &c.
8. How person aggrieved by such warrant may have redress. Upon petition citation to issue.
9. Proceeding upon such citation.
10. Private persons having records, and failing to deliver them over, proceedings against.

SEC. 1. If any civil or military officer having any records, books or papers appertaining to any public office, shall resign, or his office shall become vacant, he shall deliver to his successor all such records, books and papers.

SEC. 2. When any such officer shall die, his executor or administrator shall deliver such records, books and papers to his successor.

SEC. 3. If any such officer, or the executor or administrator of any such officer, shall fail to deliver such records, books and papers, he shall forfeit any sum not less than one hundred, nor more than one thousand dollars, to be recovered by action of debt or by indictment, for the use of the county, and shall pay to the person injured by the detention of such records, books and papers, all damages which he may have sustained in consequence of such detention, to be recovered by a special action on the case.

SEC. 4. If any person whose office has become vacant, or his executor or administrator shall fail to deliver any record, book or paper, to the person entitled to the same, any judge of the supreme or circuit court, upon the affidavit of any creditable person, setting forth the facts, may issue a warrant directed to some sheriff or coroner, commanding him to seize all the books, records and papers appertaining to such office, and deliver them to the proper officer, who shall be named in such warrant.

SEC. 5. If any person shall hold over or refuse to deliver such

records, books or papers, he shall first have notice of the time and place of the application for such warrant, to show cause, if any he may have, why such warrant should not be issued.

SEC. 6. The officer executing any such warrant, may break open any doors or other places in which any records, books or papers named in such warrant may be, or in which he may suspect them to be, and may arrest any person who shall resist the execution of such warrant, and carry him before some judge or justice of the peace, to be dealt with for obstructing the execution of process.

SEC. 7. Any officer to whom such warrant may be directed and delivered, who shall fail to execute or return the same, or perform any duty required of him, shall forfeit to the use of the county any sum not less than one hundred, nor more than five hundred dollars, to be recovered by indictment.

SEC. 8. Any person aggrieved by such warrant, may apply to any judge of the supreme or circuit court, who, upon the affidavit of the applicant, that injustice has been done, or is about to be done by such warrant, shall issue a citation to all persons interested, commanding them to appear before him, at a time and place named in the citation, which shall be served by the sheriff or coroner.

SEC. 9. The judge issuing such citation shall have power to enforce obedience thereto by attachment, and shall proceed in a summary manner, and determine according to right and justice, and may issue his warrant for the restoration of any books, records or papers, found to have been improperly seized.

SEC. 10. If any private person shall have or obtain possession of any books, records or papers appertaining to any public officer, he shall deliver them to the officer entitled to the same, and if he fails so to do, he shall be proceeded against in all respects as is provided in this act, in cases of officers.

[Approved: February 28, 1838.]

CHAPTER 122.

QUO WARRANTO.

SECTION
1. In what cases and upon whose relation an information in the nature of a *quo warranto* may be filed in the supreme court without applying for leave.
2. When relator shall be named as such, and in what way to proceed.
3. Process upon such information.
4. Persons summoned, to appear and plead, and relator to reply.
5. Person summoned, failing to appear, court to proceed *ex parte*.
6. What judgment to be rendered.

SEC. 1. An information in the nature of a quo warranto may be filed in the supreme court of this State against any person by any attorney for the State upon his own relation, or upon the relation of any person wishing to prosecute the same, without applying to such court for leave, in either of the following cases: First, when any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State, or any office in any corporation, created by authority of this State; or, second, whenever any public officer, civil or military, shall have done or suffered any act, which by law shall work a forfeiture of such office; or, third, when any association or number of persons shall act within this State as a corporation, without being incorporated.

SEC. 2. The relator, when the information is not on the relation of the attorney for the State, shall be named as such in the information against any person occupying, intruding into, or unlawfully holding any office or franchise, or who may have forfeited any such office, and shall proceed thereon as hereinafter provided, and according to the usual manner of proceeding in cases of information in the nature of a quo warranto.

SEC. 3. Whenever any such information shall be filed, a summons shall be issued thereon, requiring the person against whom such relation may be filed, to appear on the first day of the next term of the supreme court, to answer such information; and such summons may be served and returned in like manner as in personal actions.

SEC. 4. The person against whom an information in the nature of a quo warranto shall be prosecuted, shall appear and plead, on or before the third day of the term of the court at which the summons is

made returnable, unless the court shall give further time ; and the person prosecuting such information shall reply and proceed thereon, with as little delay as possible.

SEC. 5. If any person against whom an information in the nature of a quo warranto shall be prosecuted, shall, after having been served with a summons ten days before the return day thereof, fail to appear and plead within the time prescribed in the preceding section, the court shall, unless for good cause shewn, proceed to hear and determine the matter *ex parte*.

SEC. 6. In case any person against whom any such information shall be prosecuted, shall be found guilty of any usurpation or intrusion into, or unlawfully holding and executing any office or franchise, or of having forfeited his office, the court may not only give judgment of ouster against such person, but may fine him for his usurpation, intruding into, or unlawfully holding any such office or franchise, and may give judgment that the relator in such information named shall recover his costs of prosecution, and if judgment be given for the person against whom such information may have been filed, he shall recover his costs against the relator.

[Approved: February 16, 1838.]

CHAPTER 123.

RECOGNIZANCES.

SEC. 1. All to be taken to and in the name of the State.

SEC. 1. Whenever, by any law of this State, any recognizance may be required to be entered into, in any criminal or penal case, such recognizance shall be taken to and in the name of the State.

[Approved: February 19, 1838.]

CHAPTER 124.

RECORDERS.

SECTION
1. Office of, and record books to be kept in each county.
2. Clerk of circuit court to be *ex officio* recorder, and bond of.
3. Actions on such bond.
4. Penalty for acting as such before giving bond.
5. On failure to enter into bond, office vacant.
6. Seal of.
7. Accounts of, how audited and paid.
8. What instruments to be recorded.
9. Marriage contracts, &c., commissions and official bonds to be recorded.
10. Entry to be made of instrument filed for record, and receipt to be given.
11. Time and manner of recording.
12. When considered recorded, and form of certificate of record.
13. Index book to be kept.
14. Requisites of index.
15. Separate index books for other instruments recorded.
16. Deeds and conveyances hereafter recorded, to be referred to in index.
17. Penalty for failure or breach of duty of recorder, and how recovered.
18. And to be deemed guilty of misdemeanor.
19. Not bound to record till fee paid.

SEC. 1. There shall be established in each county in this State, an office to be styled the recorder's office, which shall be kept at the seat of justice of each county, by some competent person, who shall duly attend to the duties of such office, and who shall provide and keep in his office well bound books, in which he shall record in a fair and legible hand, all instruments of writing authorized or required to be recorded, in the manner hereinafter provided.

SEC. 2. The clerk of the circuit court, until otherwise provided by law, shall be *ex-officio* recorder in each county, and before entering on his duties as recorder, shall enter into bond to the State in the sum of two thousand dollars, with sufficient security to be approved by the county court of the county of which he is clerk, or the presiding judge of such court, conditioned for the faithful performance of the duties enjoined on him by law as recorder, and for the delivering up the records, books, papers, writings, seals, furniture, and all things belonging to the recorder's office, whole, safe, and undefaced, to his successor, which bond shall be deposited in the office of the secretary of state, and a certified copy thereof shall be evidence in all cases in which the original would be evidence.

SEC. 3. If any person shall be damaged by the conduct of the

recorder, such person may commence an action on his official bond in the name of the State to his use.

SEC. 4. No recorder shall enter upon or officiate in his office before he hath given such security, upon the pain of forfeiting the sum of one hundred dollars, one half to the county and the other half to him who will sue for the same.

SEC. 5. If any clerk of the circuit court shall fail to enter into bond as recorder within fifteen days after the receipt of his commission, or within thirty days after the taking effect of this act, his office shall be considered vacant, and such vacancy filled accordingly.

SEC. 6. The seal of the circuit court shall be the seal of the recorder, and shall be used as such in all cases in which his official seal may be required.

SEC. 7. Each recorder shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof; and such accounts shall be audited by the county court, and paid out of the county treasury.

SEC. 8. It shall be the duty of each recorder to record in the books provided for his office, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in his office.

SEC. 9. Each recorder shall record in books to be provided for that purpose, all marriage contracts and marriage certificates, and all commissions and official bonds required to be recorded in his office.

SEC. 10. When any deed, mortgage, deed of trust, bond, conveyance, or other instrument of writing, authorized by law to be recorded, shall be deposited in the recorder's office for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order, the names of the persons, and date and nature thereof, the time of delivery for record, and shall give to the person delivering the same, if required, a receipt, specifying the particulars thereof.

SEC. 11. Each recorder shall without delay record every deed, mortgage, conveyance, deed of trust, bond, or other writing delivered to him for record, with the acknowledgment, proofs and certificates written on or attached to the same, and all other papers therein referred to and thereto annexed, in the order, and as of the time when the same shall have been delivered for record, by entering them word for

word, and letter for letter, and noting at the foot of each record all interlineations, erasures and words visibly written on erasures, and noting at the foot of the record, the day of the month and year when the instrument so recorded was delivered to him or deposited in his office for record.

SEC. 12. Every deed, mortgage, conveyance, deed of trust, bond, or other instrument of writing shall be considered as recorded from the time it was delivered for record, and the recorder shall certify and attach to every such deed, mortgage, conveyance, deed of trust, bond and other instrument of writing so recorded, the day, month and year when he received it, and the book and page or pages in which it is recorded, and when recorded, deliver the same to the party entitled thereto or his order.

SEC. 13. Each recorder shall provide and keep in his office, a well bound book, and make and enter therein an index in alphabetical order, to all books of record wherein deeds, mortgages, or other instruments in writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded.

SEC. 14. Such index shall contain the names of the several grantors and grantees, in alphabetical order, and in case the deed be made by a sheriff, the name of the sheriff, and the defendant in the execution, and if by executors or administrators, their names and the names of their testator or intestate, and if by attorney, the name of such attorney and his constituent, and if by a commissioner, the name of such commissioner, and the person whose estate is conveyed.

SEC. 15. Each recorder shall in like manner make, keep and preserve, a full and perfect alphabetical index to all books of record in his office, wherein all deeds and instruments of writing in relation to personal property, marriage contracts, certificates of marriage, and all other papers are recorded; and a like index of all the books of record wherein commissions and official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded.

SEC. 16. Each recorder shall make a reference in the several indexes, of all deeds and conveyances which may hereafter be recorded, so as to afford at all times an easy reference to such records.

SEC. 17. If any recorder to whom any deed or other writing, proved or acknowledged according to law, shall be delivered for record, shall neglect or refuse to make an entry thereof, or give receipt

thereof as required by this act, or shall neglect or refuse to record such deed or writing, within a reasonable time after receiving the same, or shall record any deed or instrument of writing before another first deposited in his office and entitled to be recorded, or shall record any deed or other writing incorrectly, or shall neglect or refuse to provide and keep in his office, such indices as required by this act, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered by action of debt, one half to the use of the county, and the other half to the use of the person who shall sue for the same, and also be liable to any person injured, for all damages he may have sustained thereby, to be recovered by action of debt on the official bond of such recorder, or by special action on the case.

SEC. 18. If any recorder shall wilfully neglect to perform any of the duties required of him by this act, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly.

SEC. 19. No recorder shall be bound to record any deed or other instrument of writing for which a fee may be allowed by law, until such fee shall have been paid or tendered to him by the party requiring the record to be made.

[Approved: February 12, 1838.]

CHAPTER 125.

RELIGIOUS SOCIETIES.

SECTION
1. Trustees of, may hold land, &c. in perpetual succession.
SECTION
2. May defend and prosecute suits, &c.

SEC. 1. All lands and tenements not exceeding forty acres, that have been or hereafter may be conveyed by purchase, to any person or persons as trustee or trustees, in trust for the use of any religious society within this State, either for a meeting house, burying ground, camp ground, or residence for their preacher, shall descend with the improvements and appurtenances, in perpetual succession in trust to such trustee or trustees as shall from time to time be elected or ap-

pointed by any such religious society, according to the rules and regulations of such society.

SEC. 2. The trustee or trustees for the time being, of any religious society aforesaid, shall have the same power to defend and prosecute suits at law or in equity, and do all other acts for the protection, improvement and preservation of said property, as individuals may do in relation to their individual property.

[Approved: December 7, 1837.]

CHAPTER 126.

REPLEVIN.

SECTION
1. In what cases maintainable.
2. No cross replevin, or for property held by an officer, allowed.
3. May be brought by and against executors and administrators.
4. Affidavit to be filed before writ issued.
5. Substance of the writ.
6. Form of the writ.
7. Replevin bond to be given, and its amount.
8. Condition thereof.
9. Execution of writ by sheriff.
10. Service of the summons.
11. In what case sheriff to break open doors, &c.
12. If property not found, defendant to be arrested.
13. May be discharged by giving bond.
14. Right of property, when disputed, may be tried by a jury.
15. Notice to be given of such trial, and proceedings thereon.
16. Process for witnesses on such trial, how issued.
17. Proceedings upon verdict against the claimant.
18. On verdict in favor of claimant, plaintiff may obtain the property by giving bond of indemnity.
19. Penalty of sheriff, &c. delivering over property so claimed, before the same is decided according to law.
20. Action may proceed, though the property be not delivered to plaintiff.
21. Sheriff to return names of plaintiff's securities, on return of the writ.
22. Return on writ, how made.
23. Proceedings where defendant's securities are judged insufficient.
24. If no exception taken, or security adjudged sufficient, sheriff exonerated, and bond held for and assigned to plaintiff.
25. Exceptions to plaintiff's securities, when to be taken.
26. If plaintiff's security adjudged insufficient, and new bond not filed, discontinuance and restoration.
27. If no exception taken, or security adjudged sufficient, sheriff exonerated, &c.
28. Sheriff liable, on judgment of discontinuance for want of new bond, and his remedy.
29. Declaration, when filed, writ how issued and served.
30. Allegations in declaration, when action founded on wrongful detention.
31. No place certain within a town or village need be stated.

SECTION
32. Rules as to pleading.
33. General issue, when action founded on wrongful *taking*, form of.
34. When on wrongful detention.
35. Defendant may give notice of matters which could be pleaded by avowry, cognizance or plea.
36. Plaintiff may plead double to avowry, cognizance or plea.
37. Damages, how to be assessed.
38. Value of goods to be assessed.
39. Judgment for plaintiff where the goods have not been delivered to him.
40 Form of execution thereon.
41. Service of such execution, and powers of sheriff there under.
42 When *ca. sa.* to issue, and how.
43. Form of judgment for the defendant, where the property has been delivered to plaintiff.
44. In what cases such judgment shall be given.
SECTION
45. Defendant may, if he elect take judgment for the value, and that value how assessed.
46. But defendant may still proceed against the plaintiff and his securities on their bond, as assignee of the sheriff.
47. Judgment for defendant, where the property has not been replevied or delivered to plaintiff.
48. Effect of judgments in replevin as liens.
49. Effect of judgment against plaintiff as a bar.
50. Writs of *withernam* and second deliverance abolished.
51. In what case action allowed on plaintiff's bond; and sheriff to assign.
52. Rules of pleading and practice in such action.
53. In action by or against sheriff, process to be directed to and served by the coroner.

SEC. 1. Whenever any goods or chattels are wrongfully taken, or wrongfully detained, an action of replevin may be brought by the person having the right of possession, and for the recovery of the damages sustained by reason of the unjust caption or detention.

SEC. 2. No cross replevin or replevin for property in the possession of an officer, by virtue of any legal authority, shall be brought.

SEC. 3. The action of replevin may be brought by and against executors and administrators.

SEC. 4. No writ of replevin shall be issued unless the plaintiff file in the office of the clerk of the circuit court, the affidavit of himself, or some creditable person for him, stating that the plaintiff is lawfully entitled to the possession of the property mentioned in the declaration, that the same was wrongfully taken or is wrongfully detained by the defendant, and that the plaintiff's right of action has accrued within two years.

SEC. 5. The writ of replevin shall command the officer to whom it may be directed, to cause (if the plaintiff give security according to law) the goods and chattels mentioned in the declaration to be delivered to the plaintiff without delay, and to summon the defendant to appear in court on the return day of the writ and answer the plaintiff in the premises; and if the goods and chattels mentioned in the declaration cannot be had, to take the body of the defendant, so that he appear at the return day of the writ and answer the premises.

SEC. 6. Such writ shall be substantially in the following form :

STATE OF ARKANSAS, } ss.
COUNTY OF ——. }

The State of Arkansas to the sheriff of the county of ——, Greeting :

Whereas A. B. complains that C. D. has taken and unjustly detains (or does unjustly detain, as the case may be,) one horse, one cow, five head of sheep, &c., (particularly describing as set forth in the declaration,) therefore, you are hereby commanded, that, if the said A. B. shall give you security as required by law, to prosecute his said complaint, and to return the aforesaid goods and chattels, if return thereof shall be adjudged, and pay all such sums as may be recovered against him, you cause the same goods and chattels to be replevied and delivered to the said A. B. without delay ; and also that you summon the said C. D. to appear before the judge of the circuit court, at a court to be holden at the court house in and for the county of —— aforesaid, on the —— day of —— next after the date hereof, then and there to answer the premises : and in case you cannot find the aforesaid goods and chattels within your county, so as to replevy the same as you are above commanded, then you are further commanded to take the body of the said C. D. and that you have him before our said judge at the place and on the day above mentioned, to answer the said A. B. in the premises. In testimony whereof, I. G. H., clerk of the circuit court in and for the county of —— aforesaid have set my hand and affixed the seal of said court, this —— day of ——, 18—.

G. H., *Clerk.*

SEC. 7. Such writ shall not be executed in any case, unless the plaintiff, or some other person in his behalf, shall execute a bond to the sheriff or other officer with sufficient security, to be approved by such sheriff or other officer, in a sum at least double the value of the property specified in the writ, which value shall be ascertained by the oath of one or more witnesses, to be sworn and examined by the sheriff or other officer.

SEC. 8. Such bond shall be conditioned, that the plaintiff will prosecute the suit to effect and without delay, and that if the defendant recover judgment against him in the action, he will return the said property, if return thereof be adjudged, and will pay the defendant all such sums of money as may be recovered against him, by such defendant, in the action, for any cause whatever.

SEC. 9. Upon the receipt of such writ, and bond before required, the sheriff shall forthwith proceed to execute such writ by delivering the property therein named to the plaintiff, or his authorized agent, and by summoning the defendant according to the terms of the writ.

SEC. 10. The summons shall be served on the defendant by delivering to him personally, if he can be found, a brief note in writing signed by the officer serving the same, and stating the name of the plaintiff in the writ, and of his attorney, if the writ be prosecuted by one, and the time and place where the defendant is required to appear; and if the defendant cannot be found, it may be served by leaving at his usual place of abode, with some white person over the age of fifteen years, and a member of his family, a like notice in writing.

SEC. 11. If the property to be replevied, or any part thereof, be secured or concealed in any dwelling house or other building or inclosure, the officer shall publicly demand deliverance thereof, and if the same be not delivered, by the defendant or some other person, he shall cause such house, building or inclosure to be broken open, and shall make replevin according to the writ, and, if necessary he shall take to his assistance the power of the county.

SEC. 12. If the property described in the writ shall have been removed or concealed, so that the sheriff cannot make delivery thereof, he shall arrest the body of the defendant and keep him in custody, in the same manner as on a *capias ad respondendum* in a personal action, until he shall execute the bond prescribed in the next section, or be otherwise legally discharged.

SEC. 13. The defendant shall be entitled to be discharged from such arrest, at any time before final judgment had in the cause, upon executing to the officer who shall have made such arrest, with the addition of his name of office, a bond in a penalty of at least double the value of the property described in the writ, as such value shall have been ascertained by such officer in the manner herein before prescribed, with such security as shall be approved by such officer, conditioned, that such defendant shall abide the order and judgment of the court in such action, and that he will cause special bail to be put in, if the same be required.

SEC. 14. If any person other than the defendant, who may be in possession of the goods and chattels specified in the writ, shall claim property therein, or in any part thereof, and shall pay to the sheriff the fees of a jury for trying such claim, the sheriff shall take the goods and chattels described in the writ, and detain them in his possession; and

shall forthwith summon a jury to appear before him at such time and place as he shall specify, which time shall be within five days thereafter, to try the validity of such claim.

SEC. 15. The sheriff shall give notice to the parties, their agents or attorneys, of the time and place at which such jury will appear, and at which time he shall swear the jury, and such proofs and allegations as the parties may produce shall be submitted to them.

SEC. 16. Subpœnas may be issued by the clerk of the circuit court in which the action is pending, to compel the attendance of any witness before the sheriff and jury, in the same manner, and with like effect as upon a trial in the circuit court.

SEC. 17. If the jury find that the property in such goods and chattels is not in the person claiming them, the sheriff shall forthwith make delivery thereof to the plaintiff in the replevin.

SEC. 18. If the jury find that the property in such goods and chattels is in the person who shall have made claim thereto, the sheriff shall not deliver the same, unless the plaintiff in such replevin shall indemnify such sheriff to his satisfaction, for delivering the property claimed, and shall refund to such claimant the fees of the sheriff and jury, required to be paid by him as aforesaid, in which case the sheriff may deliver such property to the plaintiff.

SEC. 19. Any sheriff or other officer, to whom a writ of replevin may be delivered, who shall deliver to the plaintiff any goods and chattels which shall have been claimed as before provided, with due notice of such claim, and before the same is inquired into and decided according to law, shall forfeit to the person making such claim one hundred dollars, besides being liable for all damages which such person may have sustained by such delivery, which penalty and damages may be recovered in the same action, or in another suit at the action of the party.

SEC. 20. If the goods and chattels specified in any writ of replevin have not been delivered to the plaintiff, he may proceed in the action for the recovery of such goods and chattels or the value thereof.

SEC. 21. The sheriff shall return the writ at or before the return day thereof, and shall annex thereto the names of the persons who were sureties in the bond taken by him from the plaintiff, with their places of residence.

SEC. 22. The sheriff shall state in his return in what manner he executed the writ, and if the goods and chattels therein specified have not been replevied, he shall state in such return the cause of his omission to make deliverance thereof.

SEC. 23. If the securities in any bond taken by the sheriff from the defendant, be adjudged insufficient, and the defendant shall fail to perfect the same and enter special bail, the plaintiff may proceed against the sheriff in the same manner as in cases of arrest in personal actions, and the sheriff shall have the same rights and be subject to the same duties and obligations, and may in like manner maintain an action on the bond taken by him.

SEC. 24. If no exception shall have been taken to the securities taken by the sheriff, on the arrest of the defendant, within the two first days of the term, or if the securities be adjudged sufficient, such sheriff shall be discharged and exonerated from all liability for the sufficiency of the securities, and the bond shall be thenceforth held by him for the security of the plaintiff and shall be assigned by the sheriff to the plaintiff or his legal representatives upon their request.

SEC. 25. The defendant in any action of replevin may except to the securities of the plaintiff, taken by the sheriff, on the receipt of the writ, within the first two days of the court at which such writ is made returnable.

SEC. 26. If such security be adjudged insufficient, and a new bond shall not be filed within such time as may be prescribed by the court, judgment of discontinuance shall be rendered against the plaintiff and such other judgment as the nature of the case may require, in order to restore to the defendant the property replevied, and to compensate him for his damages.

SEC. 27. If no exceptions be taken to the sureties in the bond given by the plaintiff in replevin, as herein provided for, within the time specified in this act, or they be adjudged sufficient, the sheriff shall be discharged from all liability for the sufficiency of such sureties, and the bond of the plaintiff shall thenceforth be held by such sheriff for the security of the defendant, and shall be assigned to such defendant or his personal representatives, if judgment be rendered for him in such action.

SEC. 28. If exceptions shall have been made and judgment of discontinuance shall have been rendered against the plaintiff, in consequence of his failure to file a new bond, when the sureties have been adjudged insufficient, the sheriff shall be liable to the defendant for such deficiency in the security, and such sheriff shall be entitled to the same remedy on the bond taken by him, as in cases of bonds given on the arrest of a defendant in personal actions.

SEC. 29. In actions of replevin the declaration shall be filed be-

fore the writ is issued, and the writ shall be served in the same time and manner as in other actions.

SEC. 30. When the original taking of the property in any action of replevin is not complained of, but the action is founded on the wrongful detention of such property, it may be alleged in the declaration, with requisite certainty of time, place and value, that the defendant received the property, which may be set forth in the declaration, from the plaintiff or some other person, naming him, to be delivered to the plaintiff when thereto afterwards requested, but the defendant, although requested so to do, has not delivered the same to the plaintiff, but refuses to deliver the same, and unlawfully detains such property to the damage of the plaintiff.

SEC. 31. It shall not be necessary for the plaintiff in his declaration to state a place certain within any town or village where the property was taken.

SEC. 32. The defendant shall be entitled to the same pleas in abatement and in bar as heretofore, and with like effect, and he may plead as many several matters as he may think necessary for his defence, and he shall plead in the same time, and be subject to the same judgment for failing to plead, as in other personal actions.

SEC. 33. When the wrongful taking of the property is complained of, the plea of the general issue shall be as heretofore, that the defendant did not take the goods and chattels described in the declaration, or any of them, in manner and form as the plaintiff hath alleged.

SEC. 34. When the action is founded on the wrongful detention of the property, and the original taking is not complained of, the plea of the general issue shall be, that the defendant does not detain the goods and chattels specified in the declaration, or any part thereof in manner and form as therein alleged; and such plea shall put in issue not only the wrongful detention of such goods and chattels, but also the property of the plaintiff therein.

SEC. 35. With the plea denying the taking or detention of the property claimed, the defendant may give notice of any matters which if properly pleaded by avowry, cognizance or plea, would be a bar to the action, and which if the goods had been replevied would entitle him to a return thereof; and he may give such matters in evidence on the trial, in the same manner and with the same effect as if the same had been so pleaded.

SEC. 36. The plaintiff may plead, in answer to any avowry, cog-

nizance or special plea, as many several matters as he may think necessary for his defence.

SEC. 37. If upon the trial of the cause, the verdict be in favor of the plaintiff, the same jury shall assess the damages which he has sustained by the unjust taking or detention of the property replevied; but if judgment pass for the plaintiff by default or upon an issue of law, a writ of inquiry shall be awarded as in similar cases in other personal actions, to ascertain his damages for such caption or detention.

SEC. 38. It shall be the duty of the jury upon such trial of the cause, or on the execution of the writ of inquiry, as the case may be, to assess the value of the goods specified in the declaration.

SEC. 39. If the goods and chattels specified in the declaration shall not have been replevied and delivered to the plaintiff, such plaintiff, in case he shall recover judgment upon the whole record, shall be entitled in addition to his judgment for damages and costs, to a further judgment that such goods and chattels be replevied and delivered to him without delay, or in default thereof, that such plaintiff do recover from the defendant the value of such goods and chattels, as the same shall have been assessed by the jury on the trial or upon the writ of inquiry.

SEC. 40. The execution to be issued on such judgment shall command the sheriff to levy the plaintiff's damages and costs, of the goods and chattels, lands and tenements of the defendant, as other executions against property; and also to replevy the goods and chattels described in the declaration, which shall also be described in the execution, and to deliver them to the plaintiff, if they can be found within his county; and if the same cannot be found, then that he levy the value thereof of the goods and chattels, lands and tenements of the defendant, as before provided.

SEC. 41. The sheriff shall proceed in the same manner to collect any moneys directed to be collected upon such execution, as upon executions against property in personal actions, and he shall possess the same powers in respect to the replevying the property described therein as are herein provided for the execution of writs of replevin, and if the goods and chattels described in the execution are replevied to the plaintiff, they shall be irrepleviable.

SEC. 42. If any execution issued under the provisions of this act shall be returned unsatisfied in whole or in part, the plaintiff shall be entitled to an execution against the body of the defendant in the same manner and under the same restrictions as similar executions are issued in personal actions, and the like proceedings shall be had thereon.

SEC. 43. If the property specified in the writ has been delivered to the plaintiff, and the defendant recover judgment by discontinuance or nonsuit, such judgment shall be, that the defendant have return of the goods and chattels replevied, unless he shall elect to waive such return pursuant to any of the provisions hereinafter contained; and also that he recover the damages sustained by him, by reason of the detention of such goods and chattels, which damages shall be assessed by a writ of inquiry as in other cases.

SEC. 44. Whenever a defendant shall obtain judgment by the default of the plaintiff in any pleading, or in any other manner, after having pleaded any matter, which if admitted by the plaintiff would be sufficient in law to entitle such defendant to a return of the property replevied, he shall be entitled to the like judgment as provided in the preceding section.

SEC. 45. The defendant, whenever he shall be entitled to a return of the property replevied, instead of taking judgment for such return as herein provided, may take judgment for the value of the property replevied; in which case such value shall be assessed by the jury on the trial, or by a verdict of inquiry as the case may require.

SEC. 46. Notwithstanding the defendant may have elected to take judgment for the value of the property, instead of return thereof, where the same may have been replevied, he shall not be precluded from resorting as the assignee of the sheriff, to his remedy against the plaintiff and his sureties upon the bond executed by them to the sheriff.

SEC. 47. If the property specified in the declaration shall not have been replevied and delivered to the plaintiff, and the defendant recover judgment, such judgment shall be for costs only, including the fees of the sheriff and jury, upon a claim of property, if one was interposed.

SEC. 48. Every judgment recovered in an action of replevin, whether in favor of the plaintiff or defendant, for any damages or costs, or for any sum of money, shall be transferred to the judgment docket in the same manner, and shall have the like effect as a lien on the real estate of the party against whom such judgment may have been recovered, as judgments in personal actions.

SEC. 49. Whenever judgment shall pass against the plaintiff in replevin, whether by default or otherwise, and a return of the property replevied is awarded, no writ of second deliverance shall be allowed, nor shall any second writ of replevin be brought for the same cause; but the plaintiff in replevin shall not be barred from bringing an action

of trover or trespass for the same property, unless the judgment in the action of replevin shall have been on the merits.

SEC. 50. The writ of *withernam* and all writs of second deliverance are hereby abolished.

SEC. 51. If any writ of return or other execution, issued in favor of the defendant in the action, shall be returned unsatisfied in whole or in part, such defendant or his representatives may have an action on the bond executed by the plaintiff and his securities, to recover the value of the property replevied and the damages and costs awarded to such defendant; and such bond shall be assigned by the sheriff to such defendant or his representatives on request.

SEC. 52. In such action the plaintiff shall assign breaches of the condition of such bond, as in other cases, and the return of the sheriff to the execution issued in the action of replevin shall be evidence of such breaches; and the amount recovered in such action of replevin shall be the measure of damages, if the value of the property replevied shall have been so recovered, and if not so recovered, such value shall be added to the amount of the damages and costs recovered in the action of replevin, and together therewith shall form the measure of damages to be assessed.

SEC. 53. Whenever an action of replevin shall be brought by or against the sheriff of any county, the writ and all process in the case shall be directed to, and be executed by the coroner.

[Approved: February 27, 1838.]

CHAPTER 127.

REPORTS OF SUPREME COURT.

SECTION

1. Reporter to be appointed, how.
2. Briefs to be filed in each case.
3. Opinions of court to be filed.
4. Requisites of such opinions.
5. Duty of clerk as to supplying reporter with copies.
6. Penalty for failure.
7. Annotation by the reporter.
8. Reports, how to be published, and when.
9. In what manner to be printed and paged.
10. Index, &c.
11. What number of copies to be printed and on what paper and type.
12. Duty of reporter as to distributing, and disposition to be made of copies distributed.
13. Disposition of copies not distributed.

SECTION
14. Reporter to let out contract for printing and binding.
15. Fees of clerk for copying.
16. Compensation of reporter.
17. Clerk to copy and transmit all decisions heretofore made.
18. Copy right given to reporter.

SEC. 1. The supreme court shall appoint some competent person to be reporter of the decisions of such court, who shall hold his office during the pleasure of the court.

SEC. 2. The counsel who shall make briefs under the rules and regulations of the supreme court, shall after the statement of the cause, briefly state the points and the authorities relied on and shall cause the same to be filed with the opinion of the court, and such brief shall form a part of the record in the cause.

SEC. 3. The opinion of the court shall in all cases be reduced to writing, and be entered at full length on the minutes, and be filed among the papers in the cause to which it relates, and the provisions of this section shall apply as well to motions that will dispose of a cause as to final decisions.

SEC. 4. The opinion of the court shall always contain a sufficient statement of the cause, so that the same may be understood without reference to the record and proceedings in the same, and it shall always appear in the opinion of the court, which of the judges delivered the same, and who concurred or dissented.

SEC. 5. The clerk of the supreme court shall, within sixty days after the adjournment of each term of said court, make out and transmit to the reporter a true copy of the points and citation by counsel, filed in each cause decided at such term of the court, giving the names of the counsel signing the briefs, distinguishing the same from the opinion of the court, together with a true copy of the opinion of the court in the cause, and a copy of the opinion of the judge dissenting from the opinion of the court.

SEC. 6. If the clerk of the supreme court shall fail to make out, certify and transmit copies of all decisions made by the court at each term thereof, within the time prescribed in the preceding section and according to the provisions thereof, he shall be fined by the court in any sum not less than ten nor more than one hundred dollars.

SEC. 7. The reporter shall prefix to such decision a note or notes containing the points decided, stating briefly the principles decided therein, and he shall from time to time furnish the printer who may be employed to print the same, the copies and notes aforesaid.

SEC. 8. The reports shall be published semiannuallly in parts,

each to contain the decisions of the supreme court and the opinions of dissenting judges, made at the term next preceding.

SEC. 9. The reports shall be printed on continuous paging until there shall be sufficient matter to form a volume of six hundred pages.

SEC. 10. The reporter shall make out and have published with the last part of each volume a complete index to such volume, and to the first part of each volume he shall cause to be prefixed a title page, together with an alphabetical list of all the cases reported therein.

SEC. 11. There shall be published five hundred copies of each volume of the reports in the semiannual parts, of super-royal size, and the same shall be printed on small pica type, and on such paper as may be approved by the reporter.

SEC. 12. As many copies of each part of the reports as may be necessary to be distributed in that form, shall be stitched and covered with strong paper, and it shall be the duty of the reporter to transmit to the clerks of the circuit court of each county, two copies of each part, as soon as practicable after the same may be ready for delivery: one of the copies so transmitted to the clerk shall be for the use of the court of which he is clerk, and the other shall be kept in his office for the examination of all persons.

SEC. 13. The remaining copies after such distribution shall be made, shall remain in the possession of the reporter until a sufficient number of the several parts shall be printed to make a volume, when the reporter shall cause the same to be bound, and delivered to the secretary of state, to be disposed of in such manner as the General Assembly may from time to time direct.

SEC. 14. The reporter shall let out the contract for the printing and binding required by this act, to the lowest and best bidder, but no contract shall embrace more than one volume, nor shall any contract be made for a second volume until the contract for the first be complied with.

SEC. 15. The clerk of the supreme court for making transcripts for publication under the provisions of this act, shall receive ten cents for each hundred words, to be paid out of the contingent fund of the supreme court on the certificate of the reporter.

SEC. 16. The reporter shall receive, as a full compensation for his services, the sum of one hundred and fifty dollars per annum, to be paid quarterly.

SEC. 17. The clerk of the supreme court shall, as soon as practi

cable, prepare and transmit to the reporter copies of all decisions heretofore made by said court, in the manner provided by this act.

[Approved: December 6, 1837. In force January 1, 1838.]

SEC. 18. Each reporter who has been, or shall hereafter be appointed under the provisions of the act to which this is a supplement, shall be considered in law as the author of all such reports as he shall publish during his continuance in office, and shall, as such, be entitled to all the benefits of the several laws of the United States respecting copy rights, to the same extent, and for the same time, as is by said laws prescribed, with the sole right and liberty of printing, reprinting, publishing and vending such reports, for such time: *Provided*, that nothing herein contained shall be so construed as to interfere with the provision of the act to which this is a supplement, requiring such reporter to furnish the State with the number of five hundred copies of each of said reports, and that the expenses of publishing the same shall be paid by the said State, as is therein provided.

[Approved and in force: February 19, 1838.]

CHAPTER 128.

REVENUE.

SECTION

TAXATION.

1. Objects on which tax shall be levied.
2. Rate of taxation.
3. State tax on hawkers and pedlers.
4. on dealers in clocks.
5. on billiard tables and nine-pin alleys.

ASSESSMENT.

6. Sheriff to be ex-officio assessor.
7. Oath of, as such assessor, and when to be filed.
8. Sheriff failing to file such affidavit, his office to be deemed vacant.
9. Assessment, when to be made.
10, 11. Assessment lists, form of, &c.
12. Persons assessed to give in statement under oath, and of what property.

SECTION

13. And to value the same.
14. Lands how to be valued, and *minimum* valuation.
15. Town lots, saw mills, tan yards, and distilleries, how to be valued.
16. Every other species of property.
17. Assessor to give notice when he will assess, and how.
18. In what cases assessor himself to ascertain value of taxable property, and to assess the same double.
19. Non-residents to file list of lands in auditor's office, and form of.
20. Auditor to furnish same to proper assessor.
21. Non-resident failing to do so, duty of assessor, and penalty.

SECTION
22. When lands to be taxed double, not to be valued at less than six dollars per acre.
23. Power of assessor to administer oaths.
24. Property omitted, how to be afterwards assessed, with arrearages and interest.
25. *Assessor* to deliver copy of assessment.
26. to file assessment list, when, and give notice thereof.
27. Persons aggrieved by assessment list may appeal to county court, when.
28. Such appeal to be in writing, and form of.
29. How to be heard and determined.
30. Penalty for failure of assessor to perform duties required.
31. Penalty for person giving false list of property, &c.

COLLECTION.

32. Clerk of county court to make out tax books, and to whom to be delivered.
33. When to be delivered.
34. Collector to give duplicate receipts therefor, and how.
35. Clerk to charge collector with whole amount of county tax.
36. Clerk to give warrant to collector, empowering him to collect, &c., and form of.
37. *Sheriff* to be *ex officio* collector.
38. to give bond, and how conditioned.
39. Sheriff neglecting or refusing to give such bond, office to be vacated, and how filled.
40. Bond to be in duplicate, and how disposed of.
41. *Collector* may perform duties by deputy.
42. Duties and powers of, and how to levy and sell for taxes.
43. What must be done before levy and sale can be made.
44. Costs, and ten per centum also to be collected upon levy and sale.
45. Person bringing in merchandise after 1st of January, to report, and pay the taxes thereon.
46. Penalty for failure to do so, and how recovered.
47. Collector to receipt for such taxes, and one receipt to be filed, and how.
48. Sheriffs to collect fines, penalties, forfeitures, &c.

SECTION
49. Clerks to collect and pay over taxes on writs, &c.
50. Clerks to keep account of fines, penalties, forfeitures and judgments, in favor of State or county.
51. Sheriffs, when to account for taxes upon convictions, fines, &c.
52. Other officers receiving money to settle with county court.
53. Settlement to be entered of record, and how.
54. Copies of such settlement to be delivered to collector and clerk, and collector to be charged.
55. Officers having settled, to make payment—and payment how enforced.
56. Upon such payment, duplicate receipts to be given, and one to be filed with clerk.
57. Officer failing to make settlement may be attached and imprisoned.
58. And penalty of, for failure to pay.

LICENSES.

59. Clerks to issue blank licenses, and duty of, when issuing.
60. Licenses, how to be authenticated.
61. *Collector*, how and when to settle for such licenses.
62. Collector, how and when to settle for other moneys received.
63. On failure to make settlement, may be attached.
64. A copy of record of settlement to be sent to the auditor.

DELINQUENCIES.

65. Collector to make delinquent tax list, and list of delinquent officers, and form of.
66. To be set up at court house door, when.
67. To be returned to court under oath, and amount credited to collector.
68. Delinquent list to be recorded, and copy transmitted to auditor, who shall credit the collector.
69. Special term of county court for such purpose, and when to be held.
70. Delinquent list to be delivered to successors of collectors.
71. Collector when to make payment.
72. Collector advancing taxes, to have lien, and how to enforce it.
73. Taxes to be levied upon lands, &c., notwithstanding change of title.

SECTION
74. When collector may levy on and sell lands or town lots, and how.
75. Sheriff to make deeds for lands of residents so sold, and at whose expense.
76. Effect and force of such deed.
77. Deed to be recorded, and how made evidence.
78. When part of tract is sold, how to be laid off, and sheriff to state in advertisement from what part.
79. Collector to make out list of lands owned by and assessed to non-residents, &c., and file same.
80. Such list, and a notice of sale to be set up at court house door, and published in newspaper.
81. And to be recorded, from such publication, and so certified, and effect of such record.
82. Sale of such lands, when to be made and how.
83. Who shall be the purchaser.
84. Sale, how long to be continued.
85. Persons purchasing, immediately to pay taxes, &c. and on failure to do so, land to be again sold.
86. Penalty for such failure, and how recovered.
87. Same provisions to apply to sale of lands of residents.
88. Clerk of county court to attend sale, aud keep record thereof, and how.
89. To make out and certify a copy of such record to the auditor, when.
90. Collector to give certificate of purchase, and form thereof.
91. Form of, when only for part of a tract.
92. How long before deeds shall be made.
93. Certificate of purchase to be assignable, and effect of assignment.
94. No collector or deputy to be concerned in such purchase, and under what penalty.
95. Collector to give deed, when, in what case, and how.
96. Deed to be acknowledged and recorded, effect of, and to be read in evidence.
97. What exceptions taken to such deeds.
98. Collector dying, being removed, &c. after land sold, his successor to make deed.
99. Sale of lands, &c. not invalid because not charged in name of right owner.
100. Lands, &c. not sold, forfeited to State, and effect of forfeiture.
101. Collector to make out list of lands forfeited; list how attested—to be recorded, and to be evidence.
102. How, and within what time, owners may redeem lands forfeited.
103. Amount to be paid by such former owner, to be ascertained by auditor.
104. State treasurer to give duplicate receipts for money so received.
105. One of such receipts to be delivered to the auditor, who shall charge treasurer therewith.
106. How owner of lands, &c. sold for taxes, may redeem, and when.
107. Person who purchased refusing to accept money so tendered, the same to be deposited with State treasurer.
108. Not to extend to lands of persons living in same county.
109. Purchaser to appoint agent in county where lands lie. If not, to whom redemption money to be paid, and effect of.
110. Collector's fee, on payment of redemption money.
111. *Collector*, penalty against, for failure to pay into State treasury.
112. Auditor to issue warrant of distress, against him and his securities, and form thereof, and to whom directed.
113. Coroner, to serve such warrant, and how.
114. Coroner to make deeds to lands sold thereunder.
115. Amount due by such collector, to be a lien on goods, &c. of collector and securities, from and till what time.
116. *Coroner*, to endorse on warrant, time of coming to hand and record the same.
117. Coroner to pay over moneys remaining from sale, to collector or securities.
118. Coroner, fees of.
119. Coroner to pay over money collected; and penalty for default.
120. *Auditor* to send to clerk of county court, list of lands in such county, redeemed, or sold by auditor.

SECTION
121. Money so due county, to be drawn for.
122. When lands, &c. not offered for sale at proper time, special sale, how to be ordered.
123. Effect of such sale—to be valid.
124. *Auditor* to keep register of lands or town lots forfeited.
125. Lands, &c. sold for taxes, how afterwards assessed.
126. Auditor to offer for sale all lands, &c. forfeited, and when.
127. Minimum price for which such lands, &c. to be sold.
128. Previous notice of such sale to be given, and how.
129. Manner of conducting such sale.
130. May be continued from day to day.
131. Person purchasing, immediately to make payment, and failing to do so, land, &c. to be again sold.
132. Penalty for such failure, and how recovered.

SECTION
133. *Auditor* to make deed for land, &c. so sold, and form thereof.
134. Effect of such deed.
135. Net proceeds of such sales, to be made a part of school fund.
136. State treasurer to deposit all moneys belonging to school fund in bank.
137. After close of sale, such lands, &c. may be sold at private sale, and on what terms.
138. On application for such purchase, statement to be furnished by auditor of tax, &c. due; and same to be paid to treasurer.
139. Auditor to make deed of conveyance thereupon, and form of.
140. Effect of such deed.
141. All deeds made by auditor to be recorded, and where.
142. *Auditor*, when and to whom to furnish copies of assessment list and tax list.

SEC. 1. For the purpose of raising a revenue to support the government of this State, a tax shall be levied on the following objects: First, all lands lying within this State, claimed or owned by any person or corporation, whether such lands may have been patented or not, except such as are exempt from taxation by virtue of the compact between this State and the United States; second, all town lots, and the improvements thereon; third, all slaves over the age of eight years, and under sixty; fourth, all saw mills, tan yards, and distilleries; fifth, all household furniture belonging to any one family, over four hundred dollars in value; sixth, all pleasure carriages, whether with two or four wheels; seventh, all horses, mares, and neat cattle, over three years of age, and all jacks, jennies, and mules, over two years of age; eighth, all capital employed in each year in merchandizing; ninth, all money loaned on interest, beyond the amount for which the same person pays interest; tenth, all capital vested in steamboats.

SEC. 2. The annual tax to be levied on the objects of taxation specified in the preceding section, shall be at the rate of one eighth of one per centum on the assessed value thereof, until otherwise provided by law.

SEC. 3. There shall be levied and collected, as a State tax, the sum of twentyfive dollars on each and every hawker or pedler, whether

by land or water, for the privilege of hawking and peddling goods, wares and merchandise, throughout this State, for the term of six months.

SEC. 4. There shall be levied and collected, as a State tax, the sum of fifty dollars from each pedler or dealer in clocks, for the privilege of peddling and dealing in clocks in this State for the term of six months.

SEC. 5. There shall be levied and collected, as a State tax, the sum of five hundred dollars, on the keeper of every billiard table in this State, and the like sum on every keeper of a nine-pin alley, for the period of six months, and at the same rate for a shorter time; and no person shall have or use any billiard table or nine-pin alley, without first paying to the sheriff the tax required by this act.

SEC. 6. The sheriff of each county shall be, *ex officio*, assessor for his county.

SEC. 7. On or before the tenth day of January, in each year, the sheriff of each county shall make, and file in the office of the clerk of the county court of his county, an affidavit, in the following form:

"I, —— ——, do solemnly swear, that I will perform the duties of assessor of the county of ——, for the year ——, faithfully, diligently and truly, according to law; that I will spare no person for favor, affection, reward, or the hope thereof; that I will wrong no person, through hatred, prejudice, or ill will; and that I will do equal justice, according to the best of my judgment, so help me God."

SEC. 8. If any sheriff shall neglect to file such affidavit within the time prescribed in the preceding section, his office shall be deemed vacant, and it shall be the duty of the clerk of the county court, without delay, to notify the governor of such vacancy.

SEC. 9. It shall be the duty of each assessor, immediately after the first day of January, in each year, to proceed and take an accurate account of all taxable inhabitants, property and privileges, made taxable by law in his county.

SEC. 10. Such list shall be in two separate parts, the one to contain the names, in alphabetical order, of all persons residing in his county, who own or hold taxable property therein; the other to contain the names, in alphabetical order, of all non-residents of the county who own taxable property therein.

SEC. 11. Such lists shall also be in tabular form, with a suitable caption, and separate columns for the names of owners of property, and kinds of property assessed, the assessed value of each kind and the whole value of each person's taxable property, and such other columns as may be found useful in practice.

SEC. 12. Each assessor shall require each person in his county to give in, under oath, first, a description of all his lands, by township, range, section, quarter section, tract, lot, or part thereof, and the number of acres in each particular tract or sub-division thereof; second, all town lots, with the improvements thereon; third, all saw mills, tan yards, and distilleries; fourth, all slaves over the age of eight years and under sixty; fifth, all household furniture used in his family over the value of four hundred dollars; sixth, all pleasure carriages, whether with two or four wheels; seventh, all horses, mares, jacks, jennies, mules, and neat cattle, made taxable; eighth, all capital employed in each year in merchandizing; ninth, all money loaned on interest, beyond the amount for which he pays interest; tenth, all capital vested in steamboats.

SEC. 13. The assessor shall require each person owning or holding taxable property, in his county, to value the same, under oath, valuing each tract or town lot separately, and each kind of other property separately from every other kind.

SEC. 14. All lands shall be valued at the true value thereof, in ready money, taking into consideration the fertility and quality of the soil, the vicinity of the same to roads, towns, villages, and navigable waters, water privileges on the same, and all other local advantages, having no reference to the improvements thereon; but no lands shall be valued at a less price per acre than three dollars.

SEC. 15. All town lots, and the improvements thereon, and all saw mills, tan yards and distilleries, shall be valued at the true value thereof, taking into consideration all local advantages.

SEC. 16. Every other species of property shall be valued at the true value thereof in ready money.

SEC. 17. The assessor of each county shall, by giving ten days' previous public notice, by advertisements set up in three of the most public places in each township in his county, appoint three days in succession, in which he will attend in such township, at the place appointed for holding elections, for the purpose of taking an account of the taxable inhabitants and property in such township.

SEC. 18. If any taxable inhabitant of any township shall fail to attend and give an account of his taxable property, in accordance with the provisions of the preceding section, at the time and place appointed in his township for that purpose, or shall refuse when called on, to furnish the assessor with a list of his taxable property, as required by this act, or if the assessor shall have reason to believe that the list furnished

him is fraudulent, or does not contain a correct list and value of the property owned by such person, the assessor shall ascertain, by the best means in his power, the taxable property belonging to such person, and the value thereof, and, as a penalty for such neglect, he shall assess such property at double its value.

SEC. 19. Each non-resident who may hold land in this State, shall, on or before the first day of January, in each year, file or cause to be filed, in the office of the auditor of public accounts, under oath, an accurate list and description of all lands held by him in this State, the county in which the same may be situate, and the local advantages thereof, together with the number of acres in each tract, and the value thereof per acre.

SEC. 20. Immediately after the receipt of any such list, the auditor of public accounts shall furnish the assessor of each county in which any of such lands may be situate, with the description and value of the lands belonging to such non-resident.

SEC. 21. If any non-resident shall fail to furnish such list by the time required by this act, each assessor shall ascertain, by the best means in his power, all lands owned by non-residents in his county failing to comply with the provisions of this act, and the value of such land, and assess the same at double the value thereof, as a penalty for such failure to comply with the provisions of this act.

SEC. 22. Whenever an assessor, under the provisions of this act, is required, as a penalty, to assess taxable property at double its value, no lands shall be assessed at a less sum per acre than six dollars.

SEC. 23. When any fact, matter, or thing, is required by this act to be verified by oath, each assessor shall have power to administer the same.

SEC. 24. If, by any means, any tract of land, or town lot, or other property, shall be omitted in the assessment of any year, or series of years, and not put on the assessment list, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon the assessment list before the same is returned to the court, with all arrearages of tax which ought to have been assessed, and ten per cent. interest on the same.

SEC. 25. If required, the assessor shall deliver to the owner of any property assessed for taxation, a copy of such assessment.

SEC. 26. Each assessor shall, on or before the twentyfifth day of March, in each year, file, in the office of the clerk of the county court of his county, the original assessment list made by him, together with

a certified copy thereof; and he shall, immediately thereafter, give notice, by at least one advertisement in each township, that he has filed his assessment list, and that the same will be laid before the next county court.

SEC. 27. Every person who may think himself aggrieved by the assessment of his property, may appeal to the county court, at the next term after the twentyfifth day of March in each year, and have assessment corrected, if it shall be found to be incorrect.

SEC. 28. Every appeal shall be in writing, and shall state specially the grounds of the appeal, and the matter or thing complained of, and no other matter shall be considered by the court.

SEC. 29. The county court shall hear and determine all appeals in a summary way, and shall correct and adjust the assessment list accordingly.

SEC. 30. Every assessor who shall fail to file his assessment list by the time specified in this act, or shall neglect or fail to perform any other duty required of him by this act, shall be deemed guilty of a misdemeanor in office, and, on conviction thereof, shall be fined in any sum not less than five hundred dollars, and shall be removed from office.

SEC. 31. If any person shall give a false, fraudulent, or incorrect list of his taxable property, to any assessor, either in quantity or value, such person shall be deemed guilty of perjury.

SEC. 32. Immediately after the assessment list shall be adjusted and corrected by the county court, and the State and county tax stated thereon, the clerk of the county court shall make out two fair tax books, each to be authenticated by the seal of his court, one for the collector of the county, and the other for the auditor of public accounts; and the original assessment roll shall be kept in his office.

SEC. 33. On or before the first day of May in each year, the clerk of the county court, in each county, shall place in the hands of the collector of his county, the tax book required in the preceding section to be made for him; and the other tax book shall, at the same time, be forwarded to the auditor of public accounts.

SEC. 34. The collector shall give duplicate receipts for the tax book, one endorsed on the original assessment list, and the the other endorsed on the tax book to be forwarded to the auditor, on which the amount of State and county tax shall be separately specified.

SEC. 35. It shall be the duty of the clerk, at the time of the de-

livery of the tax book to the collecter, to charge such collector with the whole amount of county tax stated on said book.

SEC. 36. The clerk of the county court shall attach to the tax book delivered to the collector, a warrant, under his hand and the seal of his office, in the following form :

"COUNTY OF ——, SS.

THE STATE OF ARKANSAS,

"*To the collector of* ——— *county*, GREETING :

"You are hereby commanded to collect, from each and every person named in the tax book hereunto annexed, for State and county tax for the year ——, the following rates in and upon every hundred dollars of the amount of the rates and valuations wherewith each person, according to such book, stands assessed, and so *pro rata*, that is to say, the rate of —— per hundred dollars for the State tax, and the rate of —— per hundred dollars, together with the sum of —— cents from each and every male inhabitant over the age of twentyone years, and under sixty years of age, for the county tax ; and if any person named in such book shall neglect or refuse to pay said rates within ten days after you shall demand the same, you are commanded to levy and make the same rates, or the part thereof remaining unpaid, with lawful costs, in the manner, and by the proceedings prescribed by law, out of the goods and chattels, lands and tenements, of the person so neglecting or refusing to pay such rates ; and you are further commanded to pay the amount which, according to this warrant, and the annexed tax book, you are required to collect, in the manner and within the time prescribed by law for the payment thereof. Herein fail not, at your peril.

"In testimony whereof, I, A. B., clerk of the circuit court, and *ex officio* clerk of the county court, in and for the county of —— aforesaid, have hereunto set my hand, and affixed the seal of said court, this —— day of ——, 18—. A. B., *Clerk.*"

SEC. 37. The sheriff of each county in this State, shall be *ex officio* collector of the taxes within his county, for two years, commencing on the first day of January next ensuing his election.

SEC. 38. Every sheriff shall, each year, before entering on the duties of his office, give bond and security to the State, to the satisfaction of the county court, in a sum at least double the amount of taxes levied for State and county purposes, conditioned for the faithful performance of the duties of his office, and for the well and truly paying over all moneys collected by him by virtue of his office.

SEC. 39. If any sheriff shall neglect or refuse to give bond, as required by the preceding section, his office of sheriff, immediately upon such neglect or refusal, shall become vacant; and the clerk of the county court shall notify the governor of the fact, who shall forthwith appoint some person to fill such vacancy, who will give bond.

SEC. 40. Such bond shall be executed in duplicate, one part of which shall be deposited in the recorder's office of the county, and the other part shall be sent by the clerk to the auditor of public accounts.

SEC. 41. The collectors of taxes may perform their duties by deputy.

SEC. 42. The collectors shall diligently endeavor and use all lawful means to collect all the taxes specified in the tax books of their respective counties, and to that end shall have power to levy on and sell the goods and chattels, lands and tenements, of the person liable for the tax, in the same manner, and under the same restrictions, as goods and chattels, lands and tenements, are required to be levied and sold under executions on judgments at law, when not inconsistent with the provisions of this act.

SEC. 43. No levy and sale of goods and chattels, lands and tenements, belonging to a resident of the county, shall be made until the collector has demanded payment of the tax, either by a personal application to the party liable to pay the same, or by visiting his place of abode for that purpose, and the lapse of ten days without payment of such demand, unless the person is about to abscond or leave the county.

SEC. 44. Whenever taxes shall be collected by the sale of goods, chattels, lands, and tenements, in addition to the amount of taxes, the collector shall also levy and collect the necessary costs of the proceeding, and ten per cent. on the amount of tax, for his trouble.

SEC. 45. When any person shall commence merchandizing, or bring a new stock of merchandise into any county in this State, after the first day of January, in any year, and the amount of his capital is not entered on any assessment list for taxation, such person shall report, under oath, to the collector of the county, the amount of capital by him employed, and shall pay to such collector the amount of taxes which ought to have been assessed on the amount of his capital, for State and county purposes.

SEC. 46. If any such person shall not, within thirty days after the time of his commencing merchandizing, or bringing in his new stock of merchandise, as aforesaid, report to the collector, and make payment, as required in the preceding section, he shall forfeit and pay the

sum of one per cent. on the amount of his capital, together with costs of suit, to be ascertained as near as may be by the collector, by the examination of witnesses, one half of which shall be to the use of the State, and the other half to the use of the county, to be recovered by action of debt, in the name of the collector.

SEC. 47. It shall be the duty of the collector to give such person duplicate receipts for the amount of taxes paid by him, specifying therein the amount of State and county tax, separately; and such person shall cause one of such receipts to be filed in the office of the clerk of the county court, within twenty days after the date thereof, or be subject to pay the amount of such taxes a second time; and it shall be the duty of the clerk to charge the amount of such receipt to the collector, and forward a copy thereof to the auditor.

SEC. 48. The sheriffs of the several counties shall collect and account for all taxes upon convictions, and all fines, penalties, forfeitures and other sums of money, by whatever name designated, owing to the State, or any county, by virtue of an order, judgment or decree, of a court of record.

SEC. 49. The clerks of the several courts of record in this State shall collect and pay over to the collector of their respective counties, all taxes on writs, executions, official seals, and other sums of money, by whatever name designated, coming to their hands, and belonging to the State or county.

SEC. 50. The clerks of the several courts of record shall keep a true account of all fines, penalties, forfeitures, and judgments, imposed, adjudged, or rendered, in favor of the State or any county, by their respective courts, distinguishing those payable to the State from those payable to the county, and shall keep the same open for the inspection of the judges of the respective courts, and the collector of the revenue.

SEC. 51. The several courts of record shall, at each regular term, cause the sheriffs of the respective counties to make a full and fair statement and settlement of all taxes upon convictions, fines, penalties, forfeitures, and judgments, received by them, and not before accounted for and paid over.

SEC. 52. Whenever any money shall come to the hands of any coroner, clerk, constable, or justice of the peace, on account of taxes, fines, forfeitures, penalties or judgments, in favor of the State or any county, such officer shall state and settle the amount thereof before the county court, at the first term after the receipt of the money, and pay the same over to the collector.

SEC. 53. Whenever the court shall make such settlement with any officer, the substance thereof shall be entered of record, so as to show separately the whole amount received by such officer, the amount of commissions allowed him, how much remains due to the State, and how much to the county, and on what account each sum of money was received, and to what particular fund, if any, it belongs.

SEC. 54. Whenever such settlement shall be made, the court shall cause duplicate copies thereof to be certified and delivered, one to the collector, and the other to the clerk of the county court: and the collector shall be charged by the clerk of the county court with the sum appearing thereby to be due to the State and to the county, respectively.

SEC. 55. All officers who shall have made settlement with the court, as aforesaid, shall forthwith pay the collector the full amount with which they stand charged on such settlement; and in default thereof, the collector shall enforce payment in the manner, and by the means, prescribed in this act for enforcing the collection of taxes.

SEC. 56. Whenever the collector shall receive the amount due from such officer, by voluntary payment, or by sale of goods and chattels, he shall give the officer duplicate receipts for the same, stating therein the whole amount received, how much for the State and how much for the county, and the particular fund, if any, to which the same belongs; and the officer taking such receipts, shall, without delay, deposit one of them with the clerk of the county court.

SEC. 57. Every officer required by this act to make settlement with their respective courts and pay over to the collector, who shall fail to settle his account in the time and manner prescribed, may be attached and imprisoned until such settlement shall be made to the satisfaction of the court to which he is accountable.

SEC. 58. Every such officer who shall fail to pay the amount found due from him on such settlement, and who shall be returned by the collector to the county court as a delinquent, so that the collector shall be credited in his account with the amount of such delinquency, shall forfeit five per cent. a month upon the amount due, from the time it ought to have been paid, until collected, which may be collected by suit on his official bond.

SEC. 59. In all cases where licenses are taxable by law, and required to be issued by the county court, or the clerk thereof the clerk, unless otherwise provided in some other law, shall, from time to time, issue as many blank licenses, of each kind, as may be necessary, and

deliver them to the collector, and charge him with the amount thereof, specifying in every charge, the number and amount of each kind of license.

SEC. 60. Each blank license shall be signed by the clerk, and authenticated by the seal of the court; and the collector, in granting every license, shall fill up and countersign one of the blank licenses delivered to him by the clerk; and no license not so signed, countersigned, and authenticated, shall be available to the party claiming to act under the same.

SEC. 61. The several county courts shall, at each regular term, cause the collector to settle his account of all blank licenses with which he stands charged; and after giving him credit for all licenses returned, shall ascertain the amount due from him on that account, and shall cause the same to be entered of record, so as to show the amount due to the State and to the county, respectively.

SEC. 62. In like manner and time, the collector shall be required to settle his accounts of all moneys received by him, from clerks, sheriffs, recorders, and other officers, on account of taxes, fines, penalties, and judgments; and the settlement shall be entered of record, so as to show what is due to the State and to the county respectively, from what officer received, from what branch of revenue, and the particular fund, if any, to which the same belongs.

SEC. 63. If any collector fail to make settlement in the time and manner aforesaid, he may be attached until he make settlement with the county court.

SEC. 64. Immediately after every settlement with the county court, a copy of the record shall be certified and sent to the auditor of public accounts.

SEC. 65. Whenever any collector shall be unable to collect any taxes specified in the tax book, having diligently endeavored and used all lawful means to collect the same, he shall make a list thereof, to be called the delinquent tax list, in which shall be stated the names of all persons whose taxes cannot be collected, alphabetically arranged, with the amount due from each; and a like delinquent list of all delinquent clerks, and other officers herein before required to pay to the collectors the amount of revenue by them respectively received, to be called a list of delinquent officers.

SEC. 66. On or before the first day of November, in each year, each collector shall set up a copy of such delinquent lists at the court house door of his county.

SEC. 67. At the term of the county court to be held in each county immediately after the first of November, the collector shall return the delinquent list, under oath, to the county court, and the amount thereof, or so much thereof as the court shall find properly returned delinquent, shall be allowed and credited to the collector in his settlement.

SEC. 68. It shall be the duty of the clerk of the county court to enter on the records of such court, at full length, the delinquent list of the collector as adjusted by the court; and he shall, immediately thereafter, transmit a copy thereof to the auditor of public accounts, who shall credit the collector with the amount appearing from such list to be due to the State.

SEC. 69. If there be no regular term of the county court in any county, in the month of November, in such case a special term of said court shall be held in such county, on the second Monday of November, in each year, for the purpose of acting on the collector's delinquent list; and at such special term, the collector shall make settlement as required by this act at a regular term.

SEC. 70. The delinquent list allowed to any collector, shall be delivered to his successor, who shall collect the same, if practicable, and account therefor as for the tax book, and so on to every succeeding collector, until the whole shall be collected, or the court shall order otherwise.

SEC. 71. Every collector shall, annually, on or before the first Monday of December, pay into the State treasury the whole amount of revenue with which he may stand charged, deducting his commission and the amount of his delinquent list; and the treasurer shall give him duplicate receipts for the amount paid, one of which shall be deposited with the auditor within five days after its date.

SEC. 72. Every collector who shall pay into the State and county treasury the full amount of State and county tax on the tax book, on or before the time prescribed in the preceding section, shall have the same lien upon the property chargeable with taxes advanced by him, as the State would have if the taxes remained unpaid; and may proceed to collect the same for one year after such payment, in the same manner as other taxes are collectable, notwithstanding his term of office may have expired.

SEC. 73. All taxes upon lands and town lots, whether for State or county purposes, and all penalties and interest charged for the nonpayment of taxes, shall be levied upon the lands charged therewith,

until payment or forfeiture, notwithstanding any change of title, by deed, judgment, or otherwise.

SEC. 74. Each collector, on the failure of any resident of his county to pay the amount of taxes with which he may be charged on the tax book, and if sufficient personal property belonging to such delinquent, liable to be taken, whereon to levy and make distress for the payment of such taxes, cannot be found, shall levy on and sell the lands or town lots on which such taxes may be charged, in the same manner as lands may be levied on and sold by virtue of any execution issued out of the circuit court.

SEC. 75. When any collector shall sell any lands or town lots, under the provisions of this act, owned by a resident of his county, he shall at the expense of the purchaser of such lands or town lots, make, execute, and acknowledge a deed therefor, in the same manner as deeds are made for lands sold under execution.

SEC. 76. Such deed shall vest in the grantee, his heirs and assigns, a good and valid title, both in law and equity, and shall be evidence of the legality and regularity of the sale of such lands, until the contrary be made appear.

SEC. 77. Every deed so executed shall be recorded as other conveyances of land; and thereafter such deed, or a copy thereof, or of the record, certified by the recorder, shall be received in evidence in any court in this State, without further proof of its execution.

SEC. 78. When only a part of any tract of land, advertised to be sold for taxes, shall be sold, such part shall be laid off in a square, and it shall adjoin one or other of the corners of the survey of such tract, so as not to include the improvement, if any, if it can be avoided; and the collector shall, in his advertisement of the sale of any lands for taxes, state from what part of any tract any portion which may be sold, less than the whole, shall be laid off.

SEC. 79. It shall be the duty of each collector, on or before the fifteenth day of September, in each year, to make out, and file in the office of the clerk of the county court, a list of all lands and town lots in his county, owned by and assessed to persons who do not reside therein, setting forth the owners' names, and a description of the land and town lots, as the same are described in the tax book, and charge therein the taxes due for the current or preceding year, together with a penalty of twentyfive per centum on the amount of taxes due.

SEC. 80. The collector shall cause a copy of such list to be set up at the court house door of his county, and published in some news-

paper printed in this State, at least four weeks before the first Monday of November, to which list he shall attach a notice that the whole of the several tracts of land and town lots described in such list, or as much thereof as shall be necessary to pay the taxes and penalty charged thereon, will be sold at the court house door of his county, on the first Monday of November thereafter, unless such taxes, penalty, and expenses of advertising be paid before that time.

SEC. 81. The collector shall, before the day of sale mentioned in said notice, cause to be recorded, in the office of the clerk of the county court, in a book to be by him provided and kept for that purpose, such list and notice; and such clerk shall make the record from the list and notice published in the newspaper, and shall certify, at the foot of the record, the name of such newspaper, and the length of time such list and notice was published before the day of sale, which record shall be evidence of the facts stated therein.

SEC. 82. The collector or his deputy shall attend at the court house in his county on the first Monday of November, in conformity with the notice aforesaid, and then and there, at and after the hour of ten o'clock in the forenoon of said day, proceed to offer for sale, separately, each tract of land and town lot contained in such list, and on which the taxes and penalty have not been paid.

SEC. 83. The person offering at such sale to pay the taxes and penalty charged on any tract or lot, for the least quantity thereof, shall be the purchaser of such quantity.

SEC. 84. The collector may continue such sale from day to day, until each tract of land or town lot contained in such list, and on which the taxes and penalty thereon remain unpaid, shall be sold or offered for sale.

SEC. 85. The person purchasing any tract of land or town lot, or any part thereof, shall forthwith pay to the collector the amount of taxes and penalty charged thereon; and on failure so to do, the collector shall immediately offer such land or lot again for sale, in the same manner as if no such sale had been made.

SEC. 86. The person so failing to make payment, shall forfeit and pay a penalty of fifty per centum on the amount of such taxes and penalty, to be recovered by action of debt, in the name of the collector, for the use of the county, before any justice of the peace or court having jurisdiction thereof.

SEC. 87. The provisions of the four preceding sections shall apply as well to the sale of the lands of residents as non-residents, for taxes.

SEC. 88. The clerk of the county court, or his deputy, shall attend all such sales of lands for taxes made by the collector, and shall make a record thereof in a book to be kept for that purpose, therein describing the several tracts of land and town lots as they are described in the list, stating, in separate columns, the State and county tax, with the penalty thereon, and how much of each tract or lot was sold, and to whom sold; and such tracts or lots as shall remain unsold, for the want of bidders, shall be entered as sold to the State.

SEC. 89. The clerk of the county court shall make out and certify a copy of such record to the auditor of public accounts, before the time when the collector is required to pay into the treasury the State tax.

SEC. 90. The collector shall make out, and deliver to the purchaser of any land or lot sold for the payment of taxes as aforesaid, a certificate of purchase, therein describing the land or lot sold, as the same was described in the tax book, and stating therein the amount of taxes and penalty for which the same was sold, and that payment has been made.

SEC. 91. If only a part of a tract of land be sold, such certificate shall specify the quantity sold, and at what part of the tract the same shall be laid off, and shall contain a direction to the county surveyor, requiring him, when requested by the purchaser, his assignee or heirs, to lay off such tract by metes and bounds; and it shall also be specified in such certificate whether the lands were sold as the property of a resident or non-resident of the county.

SEC. 92. No deed shall be made by the collector, for any lands or lots sold as aforesaid, until the expiration of one year from and after the sale, nor shall the survey thereof be made until after the expiration of that time.

SEC. 93. Such certificate of purchase shall be assignable, and an assignment thereof shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser.

SEC. 94. No collector, or his deputy, shall, either directly or indirectly, be concerned in the purchase of any tract of land or town lot sold for the payment of taxes, under the penalty of five hundred dollars, to be recovered by indictment.

SEC. 95. At any time after the lapse of one year from the time of such sale for taxes, if the land or lot sold shall not have been redeemed, the collector shall, on request, and on the production of the certificate of purchase, and, in case of the sale of part only of any tract, on pro-

duction of the county surveyor's return of the survey, in conformity with the requisition of such certificate, execute and deliver to the purchaser, his heirs, or assignee, a deed of conveyance for the tract of land or town lot, or part thereof, that shall have been sold as aforesaid.

SEC. 96. The deed so made by the collector shall be acknowledged and recorded as other conveyances of lands, and shall vest in the grantee, his heirs or assigns, a good and valid title, both in law and equity, and shall be received in evidence in all courts of this State, as a good and valid title in such grantee, his heirs, or assigns, and shall be evidence of the regularity and legality of the sale of such lands.

SEC. 97. No exception shall be taken to any deed made by a collector for lands sold for the payment of taxes, but such as shall apply to the real merits of the case, and are consistent with a liberal and fair interpretation of the intention of the General Assembly.

SEC. 98. If any collector shall die, be removed from office, or his term of service expire, after selling any land for taxes, and before making and executing a deed for the same, the collector then in office shall make and execute a deed to the purchaser of such lands, in the same manner, and with like effect, as the officer making such sale would have done.

SEC. 99. No sale of any lands or town lots for the payment of taxes shall be considered invalid on account of its having been charged in the tax book in any other name than that of the rightful owner, if such land or lot be, in other respects, sufficiently described in the tax book, and the taxes for which the same is sold be due and unpaid at the time of such sale.

SEC. 100. Every tract of land or town lot offered for sale by any collector, as herein before provided, and not sold for want of bidders, shall be, and the same is hereby declared to be forfeited to the State of Arkansas; and thenceforth all the right, title, claim, and interest, of the former owner or owners thereof, shall be considered as transferred to, and vested in the State, to be disposed of in such manner as is hereinafter directed.

SEC. 101. It shall be the duty of each collector, immediately after such sale of lands for the payment of taxes, to make out a correct list of all lands that were forfeited to the State at such sale, for the want of bidders, under his hand, and attested by the clerk of the county court, and cause the same to be recorded in the recorder's office of his county, which shall be evidence, in all courts of this State, that

the title to each and every tract of land and town lot contained in such list, has passed to and vested in the State.

SEC. 102. The former owner of any tract of land or town lot which may have been forfeited to the State, may, at any time before the expiration of two years from the date of the forfeiture of such land or lot, pay into the State treasury the amount of State and county tax, interest, and penalty, due thereon at the time of such forfeiture, and which would have accrued thereon, if such lands or town lots had been continued on the tax book; and in such case, the right and claim of the State to such lands or town lots shall be relinquished to such former owner, and such lands or lots shall be entered for taxation in the name of the proper owner.

SEC. 103. The amount which such former owner of any such tract of land or town lot shall be liable to pay before redeeming the same, shall be ascertained by the auditor.

SEC. 104. It shall be the duty of the State treasurer, on the receipt of any money for the redemption of any lands or town lots that may have been forfeited to the State under the provisions of this act, to give duplicate receipts therefor in which he shall state how much he received for State and how much for county tax.

SEC. 105. The person redeeming such lands or lots, shall, without delay, deliver one of such receipts to the auditor of public accounts, who shall charge the treasurer with the amount thereof.

SEC. 106. If the owner of any lands or town lots that may have been sold for the payment of taxes, his agent or attorney, within twelve months from the time of the sale thereof, shall pay or tender to the purchaser of such lands or town lots, his legal representative or lawful agent, the amount of taxes and penalty paid thereon, together with the costs of such sale, and one hundred per centum on the whole amount paid by such purchaser, and shall pay or tender to the purchaser, or his legal representative, the true value of any improvement made on such lands or lots, such lands and town lots shall, from that time, be discharged from such sale, and shall thereafter be assessed in the name of such owner.

SEC. 107. If any purchaser of lands sold for taxes under the provisions of this act, shall refuse to accept the amount tendered for the redemption of any lands or town lots sold as aforesaid, the person so tendering shall deposit with the State treasurer the amount so tendered, which shall be sufficient evidence of such tender.

SEC. 108. The provisions of the two preceding sections shall not

extend to lands belonging to any person residing in the county in which the lands or town lots sold for the payment of taxes may be situate.

SEC. 109. In all cases where lands or town lots shall be sold for the payment of taxes, as required by this act, the purchaser shall appoint an agent in the county in which the lands are situate, if he is not a resident of such county, with power to receive the redemption money for the same; and if such purchaser shall fail to appoint such agent, the owner of such lands or lots may pay the amount of the redemption to the collector of the county where the lands lie, who shall give a receipt therefor, which shall forever debar the right of such purchaser to any such tract of land or town lots.

SEC. 110. Every person paying to the collector the redemption money on any land, agreeably to the provisions of this act, shall, in addition to the amount of said redemption, pay the collector the sum of five per centum thereon, as a commission for his trouble thereon.

SEC. 111. If any collector of the revenue shall fail or neglect to pay into the State treasury the amount of State tax with which he may be chargeable, by the tenth day of December, in each year, such delinquent collector shall be charged by the auditor of public accounts, with the sum of twentyfive per centum on the amount then due from such delinquent collector, and he shall, moreover, be liable to pay the sum of five per centum per month thereon, until the same shall be paid.

SEC. 112. It shall be the duty of the auditor of public accounts, immediately after the time specified in the preceding section, in each year, to issue a warrant of distress against such delinquent and his securities, directed to the coroner of the county in which such delinquent and his securities reside, commanding him to distrain, levy, and sell the goods and chattels, lands and tenements, of such delinquent and his securities, or so much thereof as shall be sufficient to satisfy the amount with which such delinquent is chargeable, together with five per centum per month thereon until paid, and costs of sale, and that he pay over to the State treasurer the same, when collected.

SEC. 113. The coroner to whom any such warrant shall be directed, shall proceed immediately to levy and collect, from such delinquent collector and his securities, the amount specified in such warrant, together with the sum of five per centum per month thereon until the same shall be paid, with costs, by distress and sale of the goods and chattels, lands and tenements, of such delinquent collector and his securities, in the same manner as goods and chattels, lands and

tenements, are required to be sold by virtue of an execution issued out of the circuit court.

SEC. 114. When any lands and tenements shall be sold by any coroner, under the authority of any such warrant, he shall make, execute, acknowledge, and deliver to the purchaser, at the expense of such purchaser, a deed for such lands and tenements, in the same manner as sheriffs are required to make and acknowledge deeds for lands sold under execution; and such deed, when recorded, shall have the same force and effect as a deed made by a sheriff.

SEC. 115. The amount due by such collector shall be a lien on the goods and chattels, lands and tenements of such delinquent collector and his securities, from the time such warrant shall come to the hands of such coroner, until the same shall be discharged according to law.

SEC. 116. It shall be the duty of every coroner, immediately after the receipt of any such warrant, to endorse thereon the time when it came to his hands, and to cause a record thereof to be made in the office of the clerk of the circuit court of his county.

SEC. 117. All moneys which may remain in the hands of such coroner, of the proceeds of any sale of goods and chattels, lands or tenements, after paying the amount of such warrant, and the costs and expenses of such sale, shall be returned to such delinquent collector or his securities, as the case may be.

SEC. 118. Every coroner collecting money by virtue of any warrant issued by the auditor of public accounts, as aforesaid, whether the same be collected by sale of property or not, shall be entitled to receive the same fees as are allowed by law to sheriffs for collecting and paying over money under execution.

SEC. 119. It shall be the duty of every coroner collecting money by virtue of any warrant issued as aforesaid, to pay the same into the State treasury within thirty days after the receipt thereof; and in default thereof, he and his securities shall be liable on his official bond, for the amount so collected, together with the sum of twentyfive per centum added thereto.

SEC. 120. The auditor of public accounts shall, annually, on or before the first day of January, certify, and send to the clerk of the county court of each county, a descriptive list of all lands in said county redeemed at the treasury, or sold by the auditor, during the preceding year, stating therein specially, the amount of taxes and interest thereon, for the State and county.

SEC. 121. The amount appearing to be due any county, from the treasury, by such statement, may be drawn for by the county treasurer, by order of the county court; and such draft shall be audited and paid as other liquidated claims against the treasury.

SEC. 122. If from any cause, the collector of any county should fail to offer for sale the lands or town lots in his county liable to be sold for the payment of taxes, and belonging to persons non-residents thereof, at the time prescribed for the sale of lands for taxes, the county court of such county, on good cause shown, shall have power to order the collector to offer such lands and town lots for sale, at a time therein to be expressed, and on giving at least thirty days' notice thereof, in some newspaper printed in this State, in the same manner as is required by this act in other cases.

SEC. 123. Such sale shall be as valid and effectual, in all respects, as if the same had been made at the time required by this act.

SEC. 124. All lands and town lots that shall be forfeited to the State, under the provisions of this act, shall be registered by the auditor, in a book to be by him provided for that purpose; and when any lands or lots thus registered, are redeemed or sold under the provisions hereinafter expressed, a note shall be made of the time of such redemption, and when sold, the date of such sale, and the person to whom sold.

SEC. 125. All lands and town lots sold for the payment of taxes, shall be thereafter assessed in the name of the purchaser.

SEC. 126. It shall be the duty of the auditor of public accounts, on the third Monday in January, in each year, to offer at public auction, all lands and town lots that have been forfeited to the State, under the provisions of this act, for the term of two years, and which have not been redeemed; and this section shall be construed so as to include all lands and town lots that have been forfeited to the late Territory of Arkansas.

SEC. 127. Such lands and town lots shall not be sold for a less sum than the amount of State and county taxes, with the interest and penalties, due thereon up to the time of such sale.

SEC. 128. The auditor shall publish, in some newspaper printed in this State, a list of all lands and town lots to be offered for sale at any time, with the names of the persons to whom such lands have been assessed, at least thirty days before said third Monday of January, to which shall be attached a notice that the lands and town lots described in such list will be sold at public auction, to the highest bidder, on the third Monday of January thereafter.

SEC. 129. The auditor shall, on the said third Monday of January, at or after the hour of ten o'clock in the forenoon, proceed to offer for sale, separately, each tract of land or town lot contained in such list, and which shall have been forfeited to the State as aforesaid.

SEC. 130. The auditor may continue such sale, from day to day, until each tract of land and town lot contained in such list shall be sold or offered for sale.

SEC. 131. Every person purchasing land or town lots at such sale, shall pay into the State treasury the amount for which the same may have been sold; and on failure so to do, the auditor shall immediately offer such land or lot again for sale, in the same manner as if no such sale had been made.

SEC. 132. If any person purchasing lands or lots at such sale, shall fail to make payment as required in the preceding section, such person shall forfeit to the State the sum of fifty per centum on the amount for which such lands or lots may have been bid off, to be recovered by action of debt, before any court or justice of the peace having jurisdiction thereof, in the name of the State.

SEC. 133. The auditor shall execute, under his hand and the seal of his office, and deliver to each person purchasing lands or lots at such sale, a deed of conveyance, in which he shall describe the lands or lots sold, and the consideration for which the same were sold, and shall convey to the purchaser all the right, title, interest and estate of the former owner, in and to such lands or lots, and also all the right, title, interest, and claim of the State thereto.

SEC. 134. The deed so made shall vest in the grantee, his heirs or assigns, a good and valid title, both in law and equity, and shall be received in all courts of this State as evidence of a good and valid title in such grantee, his heirs or assigns, and shall be evidence that all things required by law to be done to make a good and valid sale, were done both by the collector and the auditor.

SEC. 135. The net proceeds of the sales of all lands and town lots forfeited to the State under the provisions of this act, after deducting the taxes and penalties due the State and county, and expenses of sale, shall be set apart as a fund for the support of common schools, and the auditor shall credit the same to the school fund.

SEC. 136. It shall be the duty of the State treasurer to deposit in the bank of the State of Arkansas, all moneys received by him belonging to the school fund, to the credit of such fund.

SEC. 137. At any time after the close of any such auditor's sale, the auditor shall sell any of the lands and town lots offered for sale, and which were not sold for the want of bidders, to any person wishing to purchase the same, who shall pay the State and county tax, together with the interest, penalties, and expenses, due thereon.

SEC. 138. When any person shall make application for the purchase of any such lands or town lots, under the provisions of this act, it shall be the duty of the auditor to furnish such person a statement of the amount of taxes due thereon, noting particularly the amount due to the State and county, which statement such person shall present to the treasurer, and pay the amount due thereon.

SEC. 139. On the presentation of the treasurer's receipt for the payment of the taxes due thereon, together with the interest, penalties and expenses, to the auditor, he shall make and execute, under his hand and the seal of his office, and deliver to such purchaser, a deed of conveyance, in which he shall convey all the right, title, interest, claim and estate of the former owner, in and to such lands, and also all the right, title, interest and claim of the State thereto.

SEC. 140. Such deed, when so executed, shall be good and valid, and have the same force and effect as a deed made by the auditor for lands or lots sold at public auction under the provisions of this act.

SEC. 141. All deeds made by the auditor of public accounts, for lands sold under the provisions of this act, shall be recorded in the county in which the lands lie.

SEC. 142. It shall be the duty of the auditor of public accounts, prior to the first day of January, in each year, to furnish the assessor of each county a copy of an assessment list, and the clerk of each county a copy of a tax-list, in accordance with the provisions of this act.

[Approved and in force: March 5, 1838.]

CHAPTER 129.

REVISED STATUTES.

SECTION
1. Twentyfive hundred copies of, to be printed.
2. Contents.
3. What acts not to be published.
4. What to be published therewith.
5. Annotation, &c.
6. How arranged and indexed.
7. In what manner printed.
8. Superintendent to be elected and duties of.
9. How to be copied.
10. To whom delivered when published.
11. How to be disposed of.
12. Duty of secretary of state to transmi the same.
13. How to be sold and accounted for.
14. Duty of clerks to account, and how.
15. Secretary of state to certify number sold to auditor, and auditor to charge clerks.
16. Clerk dying, &c. disposition of copies.
17. Clerk and securities liable for failure to comply with provisions of this act.
18. Copies remaining, where preserved.
19. Term "heretofore," how construed.
20. Words in the plural, how construed.

SECTION
21. Words importing singular number or masculine gender, how.
22. General provisions, &c. how construed.
23. And both in civil and criminal matters.
24. Construction of, as to time of passage.
25. What laws in force at commencement of first session of General Assembly repealed.
26. What acts not repealed.
27. What acts not repealed by two last sections.
28. What particular acts passed at last session repealed.
29. Acts, rights, proceedings, &c. previous to such repeal, not affected.
30. Offences, fines, &c. previous to such repeal, not affected.
31. Actions, pleas &c. not affected.
32 Punishment may be inflicted according to provisions of revised acts, when required by party.
33. Vacancy in office of superintendent, how filled.
34. Not in force until governor shall issue his proclamation to that effect, unless so declared in the statute.
35. When proclamation to issue.

SEC. 1. There shall be published, in the manner hereinafter provided, an edition of two thousand five hundred copies of the revised statutes.

SEC. 2. The revised statutes shall contain all acts of a public, general, and permanent nature, passed during the present session of the General Assembly, and such as have heretofore been passed, and are not herein repealed.

SEC. 3. No acts of incorporation, acts for the appropriation of moneys, memorials, joint resolutions, or acts of a private, local, or temporary nature shall be published with the revised statutes.

SEC. 4. The constitution of the United States, with the amend-

ments thereto, the constitution of this State, the act of congress for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes, the treaty of cession of Louisiana to the United States, the compact between the United States and this State, and the several acts of congress prescribing the mode of certifying judicial proceedings, records, &c., so as to have effect in the State to which they may be sent, shall be prefixed to, and published with the revised statutes.

SEC. 5. At the head of each chapter there shall be brief notes of the contents of each section or clause, in numerical order; and at the end of each act, the date of the passage shall be noted, omitting the signatures of the governor, president of the senate, and speaker of the house of representatives.

SEC. 6. The statutes shall be alphabetically arranged in the publication, under proper heads or titles, with a complete index to the whole.

SEC. 7. The edition of the laws hereby authorized, shall be printed on good paper, the body of the work on small pica type, leaded work, the notes and index on minion type, and shall be published in one volume, of royal octavo size, well bound and lettered.

SEC. 8. There shall be elected by the General Assembly, a suitable person to superintend the publication of the revised statutes, arrange the order of publication, prepare the notes and index, examine and correct the proof sheets, and cause all clerical and typographical errors to be corrected, as far as he may discover the same.

SEC. 9. The secretary of state shall cause to be copied all the statutes passed at the present session of the General Assembly, required to be published with the revised statutes, and shall furnish the same to the superintendent, in such order, and in such time, as he may require.

SEC. 10. As soon as the revised statutes shall be printed and bound, as required by this act, they shall be delivered to the secretary of state, who shall cause the same to be disposed of in the manner hereinafter provided.

SEC. 11. The revised statutes shall be disposed of as follows: first, to the secretary of state of the United States, five copies; second, to the executive of each State and Territory of the United States, three copies; third, two thousand copies shall be divided, by the secretary of state, among the several counties, in proportion to the

number of representatives in each county in the house of representatives of the General Assembly.

SEC. 12. It shall be the duty of the secretary of state, as soon as the revised statutes shall be apportioned among the several counties, according to the provisions of the last clause of the preceding section, to transmit to the clerk of the circuit court of each county, the number of copies to which such county may be entitled.

SEC. 13. The copies so transmitted shall be sold by the several clerks of the circuit court, for the sum of four dollars per copy; and each clerk shall pay to the collector of his county the amount received by him for the sale of the same, on or before the fifteenth day of November, in each year; and the collector shall pay the amount so paid him into the State treasury, at the time of making his annual settlement.

SEC. 14. It shall be the duty of each clerk of the circuit court, at the term of the county court of his county, immediately preceding the fifteenth day of November in each year, to exhibit to such court a statement, in writing, and under oath, of the number of copies of the revised statutes sold by him, and not before accounted for, and the number remaining on hand; and such court shall cause a certified copy of such statement to be forwarded to the auditor of public accounts, who shall charge the collector with the amount which shall appear to be due the State by such statement.

SEC. 15. It shall be the duty of the secretary of state to certify to the auditor of public accounts the number of copies of the revised statutes transmitted to each clerk; and the auditor shall charge each clerk of the circuit court with the number of copies so transmitted to him.

SEC. 16. If any clerk of the circuit court shall resign, be removed from office or die, he, or his executors or administrators, shall deliver all the copies of the revised statutes remaining in his possession undisposed of, to his successor in office, as soon as he shall be qualified, who shall take charge of and dispose of the same, in the manner provided in this act.

SEC. 17. Each clerk of the circuit court, and his securities, shall be liable, on the official bond of such clerk, for any failure to comply with the provisions of this act.

SEC. 18. All copies of the revised statutes which shall remain after the disposition herein directed, shall be preserved in the office of the secretary of state, subject to the order of the General Assembly.

SEC. 19. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day when such statute shall take effect; and whenever the term "hereafter" occurs, it shall be construed to mean the time after the statute containing such term shall take effect.

SEC. 20. Whenever, in any statute, words importing the plural number are used in describing or referring to any matter, parties, or persons, any single matter, party, or person shall be deemed to be included, although distributive words may not be used.

SEC. 21. When any subject matter, party, or person, is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

SEC. 22. All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the General Assembly may be fully carried out.

SEC. 23. The rules prescribed in the three preceding sections, shall apply in all cases, both civil and criminal, unless it be otherwise specially provided, or unless there be something in the context or subject matter repugnant to such construction.

SEC. 24. For the purpose of construction, the revised statutes passed at the present session of the General Assembly, shall be deemed to have been passed on the same day, notwithstanding they may have been passed at different times; but if any provisions of different statutes are repugnant to each other, that which shall have been last passed shall prevail; and so much of any prior provisions as may be inconsistent with such last provisions, shall be deemed repealed thereby.

SEC. 25. From and after the date of the proclamation of the governor, declaring at what time the laws that have been, and that may be passed during the present session of the General Assembly, shall take effect, all laws and parts of laws passed by or under the authority of any territorial government heretofore existing, of a general and permanent nature, and which were in force at the commencement of the first session of the General Assembly of this State, shall be, and the same are hereby repealed.

SEC. 26. All other acts of a public, permanent, and general nature, in force at the commencement of the present session of the General Assembly, unless hereinafter repealed, shall be continued in force.

SEC. 27. The provisions of the two preceding sections shall not be construed to repeal any act establishing any county or county line, or for locating any county seat, or incorporating any city or town, or any other act of a local or private nature; but the same shall be continued in force until they expire by their own limitation, or be otherwise repealed.

SEC. 28. The following acts passed at the last session of the General Assembly, except as herein excepted, shall be repealed from and after the time specified in the twentyfifth section of this act, or after such time as laws passed at the present session of the General Assembly shall supply their places, to wit: An act prescribing the powers and duties of the supreme court; An act providing for the administering of oaths of office; An act regulating the office of secretary of state; An act to establish and regulate a county treasury in each county; An act regulating the duties of sheriffs; An act regulating the duties of clerks of the supreme court; An act to regulate the duty of clerks; An act regulating the duties of auditor and treasurer; An act providing the mode of establishing county lines; An act to regulate the practice in the supreme court in appeals and writs of error in civil cases; An act concerning fugitives from justice; An act concerning accessories; An act to provide for the probate of deeds in this State; An act to regulate damages on bills of exchange; An act more specifically defining interest on money, and regulating the recovery thereof; An act supplementary to an act concerning elections; An act to provide for the protection of religious congregations; An act providing for the election of a member of congress from this State; An act concerning constables; An act regulating the duties of attorneys for the State; An act concerning attorneys at law; An act prescribing the mode of disposing of real estate belonging to the estates of deceased persons; An act concerning public highways; An act establishing county courts, except so much thereof as fixes the times of holding the county courts in the several counties; An act to regulate the terms, and prescribing the powers of the circuit courts, except so much thereof as has relation to fixing the time of holding the circuit courts, not changed by any act of this General Assembly; An act to provide a permanent system of revenue for the State of Arkansas; An directing in what courts, and in what manner, suits may be commenced by and against the State, and for other purposes.

SEC. 29. The repeal of any statutory provision by this act, shall not affect any act done, or right accrued or established, or any pro-

ceedings, suit, or prosecution, had or commenced in any civil case previous to the time when such repeal shall take effect; but every such act, right, and proceeding, shall remain as valid and effectual as if the provisions so repealed had remained in force.

SEC. 30. No offence committed, and no fine, penalty, or forfeiture incurred, previous to the time when any statutory provision shall be repealed, shall be affected by such repeal; but the trial and punishment of all such offences, and the recovery of such fines, penalties, and forfeitures, shall be had, in all respects, as if the provisions had remained in force.

SEC. 31. No action, plea, prosecution, or proceeding, civil or criminal, pending at the time any statutory provision shall be repealed, shall be affected by such repeal; but the same shall proceed, in all respects, as if such statutory provision had not been repealed, except that all proceedings had after the taking effect of the revised statutes, shall be conducted according to the provisions of such statutes, and shall be, in all respects, subject to the provisions thereof, so far as they are applicable.

SEC. 32. If any person shall, after the taking effect of the act concerning criminal jurisprudence passed at the present session of the General Assembly, be convicted of any offence committed before that time, he may pray the court, before the conviction is had, that sentence be pronounced agreeably to the provisions of said act for the like offence; in which case the court shall pronounce such sentence as would have been pronounced if the offence had been committed after the taking effect of the act before mentioned.

SEC. 33. If a vacancy shall happen in the office of superintendent, authorized to be elected by this act, to superintend the printing of the revised statutes, such vacancy shall be filled by the governor.

[Approved and in force: March 5, 1838.]

SEC. 34. None of the statutes that may be passed during the present session of the General Assembly, shall take effect and be in force until the governor shall issue his proclamation, declaring that such statutes are printed and ready for delivery, unless a different day shall be expressed in the statute.

SEC. 35. It shall be the duty of the governor, as soon as the statutes that may be passed during the present session of the General Assembly are printed, to issue his proclamation in accordance with the provisions of the preceding section.

[Approved and in force: November 18, 1837.]

CHAPTER 130.

ROADS AND HIGHWAYS.

SECTION

1. All roads heretofore laid out, and not vacated, declared public highways.
2. Jurisdiction thereof given to county courts.

OVERSEERS.

3. *County Court* to lay off road districts, when and how; to appoint overseers, and their term of service.
4. Clerk of, to give sheriff written notices of such appointments, and sheriff to serve such notices.
5. Duty of sheriff, when overseer refuses or accepts.
6. Within what time sheriff to make return upon such notice.
7. Penalty for clerk failing to make out and deliver to sheriff such notices, and of sheriff for failure to serve them.
8. Penalty for person refusing to accept office of overseer.
9. Clerk to lay before county court, abstract of overseers refusing to accept.
10. When fine against overseer may be remitted.
11. County court to fill vacancies in office of overseer.
12. Duties of overseers, generally.
13. Duties when roads obstructed, bridges destroyed, &c.
14. Penalty for obstructing road, &c.
15. Limitation of preceding section to unlawful obstructions.
16. Penalty for injuring or destroying bridge, causeway or guide post.
17. Who shall be liable to work on roads.
18. Overseer to direct what tools shall be used, and each man to furnish his own.
19. Hands how to be warned, and penalty for failure to attend and work, and how recovered.
20. Judgment for, how to be given.

SECTION

21. Proceedings and judgment, when delinquent is a minor or slave.
22. Fines recovered, how to be applied.
23. Price to be paid for hire of hands.
24. Transcripts of judgments for failure to work, to be filed in county court.
25. Abstract to be filed in office of clerk of county court, and amount to be charged to overseers.
26. Overseer collecting fine, to give duplicate receipts.
27. Delinquent to file one receipt in office of clerk of county court, and overseer to be charged with amount so paid.
28. Overseers to take receipts for money paid out, and lay same before county court.
29. Settlement of county court with overseer, and penalty if overseer has improperly disposed of money.

APPORTIONMENT.

30. County court to appoint justices to apportion hands.
31. List of such apportionment, and how disposed of.
32. Term during which such justices shall act and what exemptions during time.
33. How to be notified of their appointment.
34. Penalty for refusing to accept.
35. Power of overseer or persons under him to cut timber, quarry rock, &c.
36. Owner of timber, rock, &c. not consenting, arbitrators shall be selected, and their award, how made.
37. Disposition to be made of award, and sum awarded, how to be paid.
38. Overseer may commute personal labor.

NEW ROADS.

39. Applications for, how to be made.
40. Notice thereof to be given, how.
41. Court to appoint viewers, when.
42. *Viewers* to be sworn, and their duties.
43. To report to county court, and how.

SECTION
44. Proceedings of court thereupon.
45. Twelve householders objecting, court to appoint re-viewers, and their duties.
46. If such re-viewers report against the road, the same not to be established, and costs how paid.
47. Costs how paid when report is favorable.
48. Remedy of person aggrieved by road passing through improved lands, and proceedings thereon by re-viewers.
49. Re-viewers to take oath, and what.
50. Costs of such proceeding, how paid.

CHANGE OF ROAD.

51. Proceedings where any person may wish to change road and cultivate land where it runs, and viewers to be appointed.
52. Order to be made by court on report of viewers.
53. But no road laid out by State authority, or authority of the United States, to be changed in such manner.

VACATING ROADS.

54. Petition for, by whom, and how to be presented to county court.
55. Proceedings thereon, if no remonstrance be offered.
56. Proceedings on remonstrance, and viewers to be appointed. Proceedings on their report.

PRIVATE ROAD.

57. How person may apply for private road to be opened.
58. When court may appoint viewers.

SECTION
59. Duty of viewers, and how to report.
60. Report of, to be recorded.
61. When court to order such road to be established, and how.
62. Owner of land through which it passes, objecting, not to be opened until such person is paid damages assessed by viewers.
63. County court always to prescribe time and place of meeting of viewers or re-viewers.
64. Viewers or re-viewers, power of, to meet and adjourn.
65. Viewer, refusal of, to attend, penalty for.
66. Compensation of viewers, re-viewers, and overseers, and how allowed.
67. How long persons may be compelled to work on public roads.
68. Overseer not performing duties, penalty for.
69. In suits against persons for failing to work on roads, such person may offer excuse, and if reasonable, may be acquitted without costs.
70. Constable failing to pay over moneys collected for fines, penalty.
71. County court to levy road tax on lands of non-residents.
72. Such tax, how collected, and lands sold, if not paid.
73. How paid over and appropriated.
74. Roads laid out by the United States, to be kept in repair, &c.

SEC. 1. All roads in this State, which have heretofore been laid out in pursuance of law, and which have not been vacated according to law, are hereby declared public highways.

SEC. 2. All public roads and highways shall be laid out, opened, and repaired, agreeably to the provisions of this act; and the county court of each county in this State shall have full power and authority to make and enforce all orders necessary, as well for establishing and opening new roads, as for changing and vacating any public road, or part thereof.

SEC. 3. The county court of each county, at the first term thereof, after the first day of January in each year, shall lay off and divide the county into such districts as may be deemed convenient and proper,

particularly defining the boundaries of such districts; and shall appoint one overseer of roads for each district, who shall serve one year, and until a successor is duly appointed.

SEC. 4. It shall be the duty of the clerk of the county court of each county, to make out, and deliver to the sheriff written notices to all overseers appointed as aforesaid, within fifteen days after their appointment, informing them of their appointment, and describing the bounds of their respective districts, and the roads therein; and the sheriff shall immediately deliver such notices to the persons to whom they may be directed.

SEC. 5. If any overseer shall refuse to accept his appointment, the sheriff shall return the notice of such appointment to the clerk of the county court, noticing such refusal on the back of the notice; and if the overseer shall accept his appointment, the sheriff shall notify the clerk of such acceptance.

SEC. 6. It shall be the duty of each sheriff to make return of such acceptance or refusal, within twenty days after the delivery of such notice to him.

SEC. 7. If the clerk of any county court shall fail to make out and deliver to the sheriff any of the notices required by the preceding provisions of this act, within the time prescribed, he shall be fined, by the county court, in any sum not less than ten dollars; and the sheriff shall incur the like penalty for any failure to deliver any of such notices within the time herein prescribed.

SEC. 8. If any person shall refuse to accept the appointment of overseer of any roads, he shall be fined by the county court in the sum of ten dollars, to be appropriated to the repairing of roads in the district in which such refusal shall happen.

SEC. 9. It shall be the duty of each clerk of the county court, to lay before such court, at the second term thereof after the first day of January in each year, an abstract of the names of all overseers of roads who have refused to accept their appointment.

SEC. 10. The county court, on being satisfied that any person appointed an overseer of roads, ought not to have been appointed, may remit the fine imposed on him for refusing to accept such appointment.

SEC. 11. The county court may, at any term thereof, fill any vacancy that may happen in the office of overseer.

SEC. 12. It shall be the duty of each overseer of roads to cause all public roads in his district to be kept well cleared, and in good repair. He shall cause all stumps to be cut low, so as to afford, at all

times, a free and safe passage to wagons, carriages, and horsemen, along such road. He shall cause all causeways and bridges to be made, whenever the same shall be necessary, and to keep the same in repair; and he shall cause to be erected, and kept in repair, a guide post at the forks and crossing places of every road and highway in his district, with plain inscriptions thereon, in large letters and figures, giving the distances to the most noted places to which such road may lead.

SEC. 13. Whenever any public road shall be obstructed by fallen timber, or in any other manner, and when any bridge or causeway shall be destroyed, or become impassable, or dangerous to travellers, it shall be the duty of the overseer to cause such obstructions to be removed, and to have such bridge or causeway rebuilt, with as little delay as possible; and for that purpose he may call out the persons in his district bound to work on roads, or as many of them as may be necessary.

SEC. 14. If any person shall obstruct any public road, by felling any tree or trees across the same, or by encroaching upon, or fencing up, the same, or by placing any other obstructions therein, he shall forfeit, for every such offence, a sum not exceeding twenty dollars, and a sum not exceeding two dollars for every day he shall suffer such obstructions to remain after he shall have been ordered to remove the same by an overseer, or by any householder.

SEC. 15. Nothing in the preceding section shall be so construed as to extend to any person who shall lawfully cut down any timber for rails or fire wood, who shall immediately remove the same out of the road, nor to any person through whose lands a road shall run, who shall dig a ditch or drain across such road, and keep the same in repair.

SEC. 16. If any person shall wilfully destroy or injure any bridge or causeway, or remove any of the plank or timber therefrom, or destroy or deface any guide post on a public road, every person so offending, on conviction thereof, shall be fined in any sum not less than five dollars.

SEC. 17. All free male inhabitants, between the ages of sixteen and fortyfive years, except such persons as are exempted from performing militia duty, and all male slaves of the same age, shall be subject to work on any public road within their respective townships, when assigned by the justice of the peace appointed for that purpose by the

county court, if they shall have resided in the township ten days previous to being warned to work on the same.

SEC. 18. It shall be the duty of each overseer, at the time he warns the hands to work on the roads of his district, to direct the kind of tools such hand shall use ; and each hand liable, by this act, to work on roads, shall furnish his own tools.

SEC. 19. Every person subject to work on roads and highways, under the provisions of this act, who shall fail, after having been duly warned by the overseer, personally, or by written notice left at the place of residence of such delinquent, at least three days previous to the time appointed, to work on any road under the provisions of this act, shall forfeit and pay the sum of two dollars for each day he may fail to attend and work on roads, under the provisions of this act, to be recovered before any justice of the peace of the township in which such delinquent resides, by action of debt, in the name of the overseer ; and the overseer shall, in all cases, be a sufficient witness to establish such delinquency.

SEC. 20. The amount of any judgment obtained under the provisions of this act, shall be made by execution, to be levied on the goods and chattels of the defendant.

SEC. 21. When any delinquent shall be a minor or a slave, it shall be the duty of the justice of the peace to issue his summons against the parent, guardian, master or mistress of such delinquent ; and upon judgment being entered against any parent, guardian, master or mistress of any minor, or owner or possessor of any slave, liable, by this act, to work on roads, execution shall issue as in other cases.

SEC. 22. All fines incurred by the delinquency of any hand bound to work on public roads, after being collected by the overseer, shall be, by said overseer, laid out and appropriated for the purpose of improving and repairing the roads in the district in which such delinquency happened, by hiring hands to work on the roads of such district, or any part thereof.

SEC. 23. The overseer shall hire hands for the lowest price that able bodied laborers can be procured ; and he shall, in no case, pay more than one dollar and fifty cents per day for laborers.

SEC. 24. The justice of the peace before whom judgment may have been recovered against any person, for failing to work on roads, shall make out a transcript of all such judgments, and cause the same to be laid before the county court, at the first term of said court after the first day of January in each year.

SEC. 25. The clerk of the county court shall file such abstract in his office, and charge the amount of each judgment to the overseer who may have or ought to have collected the same.

SEC. 26. When any overseer shall collect a fine from any delinquent without suit being brought, it shall be his duty to give such delinquent duplicate receipts for the amount received, and in which he shall set forth for what the same was received.

SEC. 27. It shall be the duty of such delinquent to cause one of such receipts to be filed in the office of the clerk of the county court without delay; and such clerk shall charge the overseer with the amount of such receipt.

SEC. 28. All overseers who may have collected any fines as aforesaid, shall on paying out the same to hands employed to work on roads under the provisions of this act, take a receipt from each person employed, for the amount of money paid to him, specifying the number of days' labor, and the road on which the labor was performed; which receipt shall be laid before the county court, by the overseer, at the first term of such court after the first day of January in each year.

SEC. 29. The county court shall, during the term at which such receipt is presented, make settlement with each overseer who may be charged with fines received as aforesaid, by giving such overseer credit for the amount of receipts filed by him; and if on such settlement, it shall appear that such overseer has made a proper disposition of the fines by him collected, he shall be exonerated from any further accountability for the same; but if on settlement, it shall appear that any overseer has not made a proper disposition of the money collected by him as aforesaid, the court shall assess a fine on such overseer of double the amount of money by him not accounted for; and an execution shall issue for the collection of such fine, as in other cases.

SEC. 30. It shall be the duty of the county court of each county, at the term of said court fixed by this act for appointing overseers of road districts, to appoint one justice of the peace in each township, whose duty it shall be to apportion the persons in his township liable to work on roads, among the different overseers of the township, within fifteen days after legal notice of his appointment.

SEC. 31. Such justice shall make out two lists of the hands apportioned to each overseer, one of which he shall deliver to the overseer, and the other he shall file in the office of the clerk of the county court.

SEC. 32. Each justice of the peace appointed to apportion hands as aforesaid, shall continue to perform such duty for one year from the

time of his appointment, and until a successor shall be appointed, and shall during the time he continues to perform the duties thereof, be exempt from militia duty, from working on roads, and from serving on grand and petit juries.

SEC. 33. Every justice of the peace appointed as aforesaid, shall be notified of his appointment in the same manner as overseers of roads are required by this act to be notified of their appointment.

SEC. 34. If any justice of the peace shall refuse to accept such appointment and discharge the duties thereof, he shall be fined, by the county court, in any sum not less than five dollars.

SEC. 35. The overseer of each road district, or any person under him, for the purpose of building any bridge or causeway, shall have power and authority to enter on the nearest unimproved land, and cut and haul away timber, and quarry and haul such rock and ground as may be necessary for that purpose; but the overseer shall not haul away any timber already cut, or rock already quarried, for any such purpose, without the leave of the owner, or his agent.

SEC. 36. Unless the owner or his agent shall first consent to the cutting of timber and the quarrying of rock, it shall be the duty of the overseer to call on two householders to value the materials about to be used; and if the owner of such materials or his agent shall see proper, he may choose two other householders, to unite with such as may be appointed by the overseer; and if they cannot agree, the four shall choose a fifth, as an umpire; and the five, or a majority of them, shall make out their award, under their hands and seals.

SEC. 37. Such award shall be transmitted to the clerk of the county court, who shall file and preserve the same, and such award shall be final and conclusive of the amount of damages sustained by such person; and the amount so awarded shall be paid to the owner of such materials, out of the county treasury, and the county court shall allow the same.

SEC. 38. The overseer of every road district shall have power to commute personal labor for wagons, teams, or any necessary implements which may be required on the road.

SEC. 39. All applications for new roads shall be by petition to the county court, signed by at least twelve householders of the township or townships in which such road is desired, specifying in such petition the beginning and termination of such proposed road.

SEC. 40. Notice of each intended application for a new road, shall be given by advertisements set up in two or more public places in

each township through which such road will pass, at least twenty days prior to such application.

SEC. 41. The court, when the petition is presented and publicly read, upon proof of notice as required in the preceding section, shall, if such road should be deemed necessary, appoint three disinterested householders of the county, not being petitioners or living in the direction of such road, viewers thereof.

SEC. 42. The viewers so appointed, having first taken an oath faithfully and impartially to discharge their duties, shall proceed to view the route proposed; and if they deem it of public utility, lay out and mark such road, on the best ground that can be obtained, not running through any person's inclosure, without the owner's consent, unless a good road cannot otherwise be had.

SEC. 43. Such viewers, or a majority of them, shall make their report to the next term of the county court after their appointment, therein particularly describing such road, by courses and distances, and the owners of the land through which the same may pass, which report shall be publicly read.

SEC. 44. If no objections be made to such proposed road, the court shall cause a record thereof to be made, and order such road to be opened, not less than fifteen feet wide, which shall, from that time, be regarded as a public highway.

SEC. 45. If twelve householders of any township or townships through which such proposed road may run, shall object, at the term of the court at which the report of the viewers is submitted, to the utility of such road, it shall be the duty of the court to appoint re-viewers, whose duty it shall be to proceed in the same manner as is prescribed in this act for viewing a road in the first instance.

SEC. 46. If a majority of such re-viewers report against the utility of such road, the same shall not be established, and the original petitioners for such road shall pay the costs that may have accrued.

SEC. 47. If such re-viewers report in favor of such proposed road, the objectors shall pay the costs of the re-view, and the road be ordered to be opened.

SEC. 48. If any person through whose improved lands any road shall be laid out, shall feel himself aggrieved thereby, such person may set forth his grievance, by way of remonstrance, and the court shall thereupon appoint three disinterested householders to re-view the same, and assess the damages, if any, which such objector will sustain from such

road being opened and continued through his lands, and make report to the next county court.

SEC. 49. Each re-viewer shall, before he enters on his duties, take an oath faithfully and impartially to discharge the duties assigned him.

SEC. 50. If a majority of such re-viewers assess and report damages in favor of the objector, the costs and damages shall be paid out of the county treasury; but if the majority report unfavorably, the objector shall pay the costs.

SEC. 51. Any person wishing to cultivate land through which any road may run, may petition the county court for permission to turn said road on his own land, or on the land of any other person consenting thereto, at his own expense; and the court shall thereupon appoint viewers, who shall proceed to view the same, and report the respective distances, and the situation of the ground of the established and proposed road.

SEC. 52. If, on the report of such viewers, the county court shall be satisfied that the public will not be materially injured by such change, the court shall order the same to be changed, and shall vacate so much of the old road as lies between the different points of intersection.

SEC. 53. No road laid out under the authority of the United States, or this State, shall be changed or altered by virtue of any of the provisions of this act.

SEC. 54. Whenever twelve householders of any township or townships through which any public road may pass, shall make application to the county court, by petition signed by them, for the vacation of such road, as useless, and because the repairing thereof is an unreasonable burthen on the inhabitants of the township or townships, such petition shall be publicly read at the time it is presented, and continued without further proceedings until the next term of the court.

SEC. 55. At the next term of the court after the presentation of any such petition, the same shall be publicly read, on the first day of such court; and if no remonstrance be made thereto, in writing, signed by twelve householders of the same township, the court shall make an order vacating such road, or so much thereof as the petitioners may have prayed for.

SEC. 56. If a remonstrance be presented, the court shall appoint viewers, who shall be governed as in other cases; and the judgment of the court on the report of such viewers, shall be conclusive in the premises.

SEC. 57. Any person desirous of having a wagon road laid out,

for his convenience, from the dwelling house or plantation of such person, to any public road or navigable water course, or from one public road to another, shall present a petition to the county court of the proper county, setting forth the reasons for desiring such road, and describing the points from and to which such road is desired to pass.

SEC. 58. The court shall, upon a sufficient sum of money being deposited to pay for viewing such road, appoint three householders to view the same. Such viewers shall be governed, in all respects, as viewers appointed to view public roads are governed.

SEC. 59. Such viewers shall examine the route proposed for such road, and any other route which they may deem proper; and if they, or a majority of them, shall be of opinion that a wagon road is necessary and proper, from and to the points named in the petition, they shall lay out the same, in such manner as to produce the least inconvenience to the parties through whose lands the same shall pass, and shall make a written report to the court, describing the route of the road, and the land through which the same shall pass, naming the owner thereof, if known, and the damages sustained by each owner of lands through which such road passes.

SEC. 60. Such report shall be recorded, at full length, in the record book of the county court.

SEC. 61. If upon the return of the viewers, the court shall be of opinion that the road is necessary, an order shall be made establishing the same as a private road, not exceeding twentyfive feet wide; and the person applying for such road may proceed to open the same.

SEC. 62. If the owner of any land through which such road shall pass, shall object to the opening thereof, it shall not be opened, until the person objecting shall be paid the damages assessed, by such viewers, in his favor.

SEC. 63. It shall be the duty of the county court, in every order for the appointment of viewers or re-viewers of roads, to name in such order the time and place for the meeting of the viewers or re-viewers.

SEC. 64. Such viewers or re-viewers shall have power to adjourn, from time to time, not beyond the term of the court to which they are required to make their report.

SEC. 65. If any viewer or re-viewer of roads shall neglect or refuse to attend, at the time and place set forth in such order, or at any adjourned meeting of such viewers or re-viewers, without a reasonable

excuse, he shall be fined by the county court, in any sum not exceeding twenty dollars for each delinquency.

SEC. 66. All viewers, re-viewers and overseers of roads, shall be allowed one dollar for each and every day they may be actually engaged in viewing roads, and in warning hands to work on roads; and the county court shall allow the same, upon the oath of the person performing the service.

SEC. 67. No person shall be compelled to work on public roads more than twelve days in any one year, nor more than four days at any one time or in any one month.

SEC. 68. If any overseer of roads shall fail to keep the roads in his district in good repair, agreeably to the provisions of this act, or shall fail to perform any other duty herein required of him, he shall be fined, by the county court, in any sum not less than five, nor more than fifty dollars, to be expended in repairing the roads in the district of such defaulting overseer.

SEC. 69. In all suits brought by any overseer of roads, against any person for failing to work on roads, under the provisions of this act, such person shall, on the trial of the suit, be at liberty to make his excuse; and if it should appear to the justice that such excuse is reasonable, he shall be acquitted without costs.

SEC. 70. If any constable shall fail to pay over to the proper overseer of roads, any moneys collected by him for fines imposed for failures to work on roads, for five days after he shall have received the same, he shall forfeit double the amount thereof, to be recovered by action of debt, in the name of the proper overseer, and to be appropriated by such overseer for repairing the roads in his district.

SEC. 71. It shall be the duty of the county court of each county, at the time of levying the county tax in each year, to levy a road tax on all lands belonging to non-residents, not exceeding the amount of State tax levied thereon in any one year.

SEC. 72. The collectors of the State and county tax, of the several counties, shall collect the road tax so levied, in the same manner that county taxes are collected; and if the same be not paid, such lands shall be sold, at the time and in the manner provided for the sale of non-resident lands for State and county taxes.

SEC. 73. The several collectors shall pay into their respective county treasuries the amount of road tax collected by them, which shall be appropriated, by the county court, for the opening and repairing roads in each county.

SEC. 74. All roads heretofore laid out by the United States, in this State, shall be kept in repair, in the same manner as other public roads, by the counties through which the same may pass.

[Approved and in force: February 14, 1838.]

CHAPTER 131.

RULES OF PRACTICE.

SECTION
1. To be settled and adopted by a meeting of judges of supreme and circuit courts.
2. Chief justice to appoint time of meeting and notify other judges.
3. Chief justice to preside.
4. Rules so adopted to be binding until altered, amended or abolished at some subsequent meeting.
5. To be published and distributed, and how.
6. Chief justice to call subsequent meetings.
7. Not to be made in violation of the constitution or law, but in aid of the statutes.
8. Rules to apply to criminal as well as civil and chancery practice.
9. A majority of all the judges of the State to form a *quorum*.

SEC. 1. It shall be the duty of the judges of the supreme court, together with the judges of the circuit courts, to meet at the seat of government of this State, within six months after the taking effect of this act, and when so met, to settle and adopt all the necessary rules of practice for the circuit courts.

SEC. 2. It shall be the duty of the chief justice of the State, to appoint the time of meeting, and to notify the other judges of such time.

SEC. 3. When met, the chief justice shall preside.

SEC. 4. When rules of practice shall be adopted by the judges at a general meeting, such rules shall be binding on the circuit courts of this State until altered, amended or abolished by the judges at some subsequent meeting for that purpose.

SEC. 5. The chief justice shall cause such rules to be published at the expense of the State, and to be distributed in such manner as the judges shall direct by rule.

SEC. 6. At any time when the judges of the supreme court shall deem it to be necessary, the chief justice shall call a meeting of all the

judges of the supreme and circuit courts, and when met, they may make new rules of practice, and alter, amend or abolish the rules which they may theretofore have made.

SEC. 7. The judges in making rules of practice, shall, in no instance, make any rule in violation of the constitution of the State or in derogation of any statute law which may then be in force, but all rules shall be in aid of and to carry into practice the laws of the State.

SEC. 8. The rules of practice shall be made to apply to the criminal as well as the civil and chancery practice of the courts.

SEC. 9. A majority of all the judges of the State, shall form a quorum for the adoption of rules.

[Approved: December 7, 1837.]

CHAPTER 132.

RUNAWAY SLAVES.

SECTION

1. Any person may apprehend negro or mulatto supposed to be a runaway.
2. When master of runaway is known, justice to give warrant to apprehender to convey and deliver slave to his master.
3. When not, to give warrant of commitment.
4. Warrant when slave lying out, &c.
5. Advertisement, when runaway committed.
6. Advertisement in newspaper, when and how.
7. In what case such runaway to be sold, and notice thereof, how given.
8. Disposition of proceeds.
9. Limitation for owner to draw such proceeds.
10. What is required of claimant, before delivery to him of runaway.
11. Agent may do the same.

SECTION

12. Sheriff to make duplicate statements, upon sale of slave.
13. County court to audit and examine statement, and certify to county treasurer.
14. Sheriff to pay over, treasurer to receipt, &c.
15. Proceedings by claimant to recover such money.
16. If issue found for claimant, payment to him, how made.
17. Reward and fees of person apprehending runaway.
18. And such reward and fees to be collected by sheriff before delivering up slave to claimant.
19. Definition of term "*runaway slave.*"
20. What court or judge may issue habeas corpus and discharge runaway.
21. When county to pay expenses and fees.

SEC. 1. Any person may apprehend any negro or mulatto, being, or suspected of being a runaway slave, and take him before a justice of the peace.

SEC. 2. If it shall appear to such justice, by the oath of the person apprehending, or otherwise, that the person so brought before him is a runaway slave, he shall make out and deliver to the apprehender, a certificate of the distance between the place where such runaway may have been apprehended, and the place from whence he fled, and may grant to such apprehender a warrant to convey and deliver such runaway to the owner or person entitled to possession.

SEC. 3. If the owner, or person entitled to the possession of such slave, be not known, then the justice shall make out and deliver to the apprehender a warrant to take, convey and deliver such runaway slave, together with the warrant to the sheriff or keeper of the jail of the county in which such justice resides.

SEC. 4. When any justice of the peace shall have cause to suspect from information, or upon his own knowledge, that any runaway slave is lying out or lurking in his county, such justice shall issue a warrant reciting the name of the slave and his owner, if known, directed to the sheriff or some constable in his county, commanding him to apprehend such slave and commit him to the jail of the county, to be dealt with according to law.

SEC. 5. When any person shall be committed to jail as a runaway slave, the sheriff of the county shall forthwith cause an advertisement to be put up at the court house door, describing such runaway by his name, wearing apparel, and the name and residence of the person to whom such runaway is supposed to belong.

SEC. 6. If the owner, overseer or employer of any runaway slave committed to jail, shall not within two months after such commitment, appear and claim such runaway and pay all lawful charges incurred in apprehending or securing such runaway, the sheriff shall then publish in some newspaper printed in this State, an advertisement similar to the one required by the preceding section to be put up at the court house door.

SEC. 7. If the owner, overseer or employer of such runaway, shall not appear and establish his claim to such runaway within twelve months after the first publication of the advertisement required by the preceding section, and pay all lawful charges, the sheriff shall sell such runaway at the court house door of the county to the highest bidder, first giving thirty days' notice in some newspaper printed in the State, of the time, place, and cause of such sale.

SEC. 8. The sheriff after deducting the legal expenses of appre-

hending, securing, advertising, maintaining, and selling such runaway, shall pay into the county treasury the remaining proceeds of such sale.

SEC. 9. If the owner of such runaway slave shall prove his property at any time within three years after such sale, such owner shall be entitled to draw from the treasury the amount of the proceeds of such sale, paid over by the sheriff.

SEC. 10. Before any runaway slave in custody by virtue of this act, shall be delivered up, such claimant shall, first, prove by the affidavit of some disinterested witness, that such claimant has lost such a slave as the one described in the advertisement; second, make oath that the runaway is the same that he lost; third, give bond and security to indemnify the sheriff; fourth, produce a certificate of the proof made and security given, under the seal of the court or the officer before whom the same shall have been taken, and, fifth, pay all expenses incurred in apprehending, receiving, securing, maintaining and advertising such runaway.

SEC. 11. The legally authorized agent of any person claiming a runaway slave, may claim, prove, and receive such runaway in like manner as the owner is enabled to do.

SEC. 12. When any runaway slave shall be sold as herein before directed, the sheriff shall make duplicate statements, showing the name, age and particular description of the runaway so sold, and a particular account of the expenses of apprehending, keeping, advertising, maintaining and selling such runaway slave, together with a copy of the advertisement.

SEC. 13. The county court shall audit and examine such statement, and ascertain the amount to be paid into the treasury, and cause their clerk to certify the same under the seal of the court to the county treasurer, who shall charge the sheriff therewith.

SEC. 14. The sheriff shall pay such amount into the county treasury, and the treasurer shall give receipts therefor, which when presented to the clerk, shall be credited to the sheriff, and charged to the treasurer.

SEC. 15. Any person claiming any money paid into the treasury by virtue of this act, may present his petition to the circuit court of the county in which the runaway was sold, setting forth the ground of his claim, and having served a copy of his petition on the attorney for the State prosecuting for such county, who shall appear and defend against such petition on behalf of the county, the court shall cause an issue to be made up and tried as other issues, to try the right between the claimant and the county.

SEC. 16. If the issue shall be found for the claimant, the court shall grant him a certificate thereof, which being delivered to the clerk, he shall draw a warrant on the treasurer for the amount set forth in such certificate in favor of the claimant, specifying in the warrant that it is drawn under the provisions of this act and the certificate of the court; and the amount of such warrant shall be paid by the treasurer out of any moneys not otherwise appropriated; but no claimant shall be entitled to a greater sum out of the treasury by virtue of this act, than was paid into the same as the proceeds of the sale of the runaway claimed.

SEC. 17. Every person who shall apprehend any runaway slave, and deliver such slave to the owner or other person entitled to receive such slave, or to any jailer according to the provisions of this act, shall be entitled to receive the sum of fifteen dollars; and ten cents for every mile of the distance he shall necessarily travel in conveying such slave, or such sum in lieu thereof, as the owner or other person claiming such slave may have previously offered for the same service, at the election of the person apprehending, to be paid by such owner or person claiming, or by the sheriff out of the proceeds of the sale.

SEC. 18. The sheriff shall, before delivering any slave to the owner, or person claiming such slave, require payment of the fees or charges allowed by the preceding section, if he shall have had notice thereof, and the sheriff having such notice shall be liable to the party entitled, for the payment thereof at all events.

SEC. 19. Every slave who shall be found more than twenty miles distant from the plantation, tenement, or other place where such slave is employed or required to be by his owner, overseer or employer, without a written pass or permission to that effect, from such owner, overseer or employer, is declared to be a runaway slave, within the meaning of this act.

SEC. 20. Any court or judge authorized to issue a writ of habeas corpus, may at any time order any person who may have been apprehended or imprisoned as a runaway slave to be discharged, on being satisfied that such person is not a runaway, and for that purpose may cause such person to be brought before him by a writ of habeas corpus.

SEC. 21. When any person committed as a runaway slave shall die in jail, or be discharged upon a writ of habeas corpus, the expenses of supporting such person, and the jailer's fees, shall be paid by the county.

[Approved: March 2, 1838.]

CHAPTER 133.

SALT SPRINGS.

SECTION
1. *Commissioners of*, in what cases to select the whole land granted to the State surrounding such springs.
2. To ascertain how much of such land is claimed by individuals, &c.
3. To make out plats, &c.
4. Vacancies, how filled.
5. When to report, &c.
6. Governor to appoint agent to rent and lease such springs.
7. *Agent*, when to report, and where to deposit moneys.
8. Agent, compensation of.
9. for what causes removed.
10. Vacancy in office of, how filled.
11. To execute bond, and take oath.

SEC. 1. The commissioners appointed or who may hereafter be appointed, by authority of an act approved the fourth day of November, one thousand eight hundred and thirtysix, entitled an act for selecting salt springs, shall be required in the discharge of their duties, to select the whole quantity of land granted, wherever the public surveys may have been made of the lands surrounding any salt spring, and where they may be of opinion that the quality of the lands or the local situation of such salt spring will render it advantageous to the State to make such selection.

SEC. 2. It shall be the duty of said commissioners to ascertain as nearly as practicable, the quantity of the six sections of land (adjoining each salt spring which they may select,) claimed by individuals, the names of the claimants and the character of their titles to said lands.

SEC. 3. Said commissioners shall make out plats, showing the relative position of each salt spring chosen, the lands selected, and such as are claimed by individuals within the grant to Arkansas.

SEC. 4. If both or either of said commissioners shall at any time fail or refuse to act as such, the governor may appoint a substitute or substitutes (as shall be necessary) for said commissioners.

SEC. 5. Said commissioners shall on or before the third Monday of October next, make to the governor a full report of the result of their labors, and make such suggestions relative to the subject of their duties, as they may think proper and necessary.

SEC. 6. The governor may, and he is hereby authorized whenever he deems it proper and expedient, to appoint and commission some

suitable person as the agent of the State, to rent or lease said salt springs with their appurtenances.

SEC. 7. It shall be the duty of said agent, in the month of October in every year, to report fully to the governor the condition of his agency, and to deposit in the bank of the State of Arkansas to the credit of the State, all moneys collected by him on account of his said agency.

SEC. 8. Said agent as a full compensation for his services shall be entitled to retain ten per centum on and of all sums of money collected by him as said agent.

SEC. 9. The governor may at any time remove said agent for his nonfeasance or malfeasance in office.

SEC. 10. If a vacancy should happen in the office of said agent by death, resignation or otherwise, the governor may fill such vacancy by appointment.

SEC. 11. Said agent before he enters upon his duties as such, shall execute to the governor of this State, bond in a sum and with such security as may be approved of by the governor, and take an oath before some judge or justice of the peace, to discharge the duties of his agency faithfully, and to the best of his knowledge and ability, and said oath shall be endorsed on the bond, and on the commission of said agent.

[Approved: February 23, 1838.]

CHAPTER 134.

SALVAGE.

SECTION

1. Any person may take up boat, raft, &c., lost or wrecked and in a perishable condition.
2. Owner may recover property, and to pay salvage.
3. Taker up may retain property till salvage paid, or bring action on the case.
4. Affidavit to be made by taker up.
5. Advertisement thereof.
6. When publication in newspaper not required.
7. On failure to give notice, claim to salvage forfeited.
8. Salvage on rafts.

SECTION

9. Sale of perishable property, when ordered and how.
10. Bond in such case to be given by taker up, and form of.
11. Bond where filed.
12. Justice to give copy of order of sale or shipment, and certificate that bond has been given, and effect thereof.
13. Salvage on property found afloat, when boat wrecked and stove.
14. Property to vest in taker up after one year.
15. How owner may search for and recover property lost.

SEC. 1. When any boat, vessel, raft, or other property, shall be lost or wrecked, and in a perishable condition, upon any river in this State, or making a boundary of the State, any person may take up and secure the same, at or near the place where found.

SEC. 2. When any person shall set up a claim to such property, and shall prove his title to the same, by competent testimony, before any justice of the peace of the proper county, such taker up shall restore the same to such owner if he pay such taker up a premium for salvage, at the rate of not exceeding ten per centum upon the value of all such property, to be adjudged of by some justice of the peace of the county.

SEC. 3. The taker up of such boat, vessel, raft, or other property, shall be entitled to retain the same against the rightful owner, until salvage be paid, or may have and maintain an action on the case against such owner for the amount of salvage due in accordance with this act.

SEC. 4. When any such property shall be taken up and secured, if the same exceed ten dollars in value, the taker up shall immediately go before some justice of the peace of the county, and make an affidavit that the property was wrecked or lost, and was in a perishable condition, as he believed, and that he was not instrumental, directly or indirectly, in causing the property to be so wrecked, lost, or set adrift, or placed in a perishable condition, and shall also state on oath an exact account of the quality and quantity of such property, and the time that such property was taken up, and that he has not secreted, or disposed of, directly or indirectly, any part thereof.

SEC. 5. Within twenty days thereafter, the taker up shall cause to be inserted in some newspaper printed in this State, for three weeks successively, a correct account of the time and place when and where the said property was taken up, and the description and valuation thereof, and shall also put up three advertisements to the same effect, at the most public places in the neighborhood where such property may have been taken up.

SEC. 6. If the amount of the property taken up does not exceed fifty dollars in value, no publication in the newspaper is necessary.

SEC. 7. Persons taking up property, and failing to give notice as required by this act, shall forfeit all claims to salvage.

SEC. 8. When rafts are taken up, consisting of logs, fire wood, rails, or other timber, the person taking up and securing them, and complying with the requisitions of this act, shall, on the owner's claiming the same, be entitled to not exceeding twenty per centum on the

value thereof, to be adjudged of by some justice of the peace of the county.

SEC. 9. When any raft or boat with produce therein shall be taken up, which raft, or the cargo of the boat, consists of such articles as are usually taken to the States of Mississippi or Louisiana for sale, and the owner does not apply for, or make demand of, such property within twenty days, the person taking up such property may apply to some justice of the peace of the county, where such property was taken up; and on showing that the property so taken up is of a perishable nature, and is likely to be injured, or become of less value, by being kept, such justice may make an order authorizing the taker up of such property to sell such property at public auction, on giving notice by advertisement, as the justice may direct; or authorizing the taker up to ship such property to any market where he may deem it most likely he will effect a good sale of such property.

SEC. 10. Before such sale shall be made, or the property removed for shipment to another market, the taker up thereof shall enter into bond to the State of Arkansas, with sufficient security, to be approved of by the justice, in double the value of the property so taken up, conditioned that if the owner shall appear, and establish his claim to said property within one year from the time of taking up such property, the taker up will pay to such owner the value of such property, deducting his salvage, or when taken to a market, then deducting his salvage and reasonable expenses.

SEC. 11. Such bond shall be, by the justice, filed in the office of the clerk of the county court of the county where such property was taken up, for the use of the owner.

SEC. 12. The justice shall give to the taker up a copy of such order of sale or shipment, with a certificate that bond has been entered into by such person for the security of the owner. The copy of such order and certificate, under the hand of the justice, shall be a sufficient voucher for the taker up, to authorize all acts of ownership over such property.

SEC. 13. When boats are wrecked or stove, and property is found afloat on any water course in this State, if the value thereof does not exceed one hundred dollars, then the taker up of such property shall be entitled to not exceeding one fourth part thereof, for taking up and securing such property, for his salvage on the same, to be adjudged by some justice of the peace of the county.

SEC. 14. If no demand shall be made within one year from the

taking up of any property under this act, and the taker up has complied with the provisions of this act in all respects, then the property so taken up, or the proceeds when sold, shall vest in the taker up.

SEC. 15. When any person shall make oath before any justice of the peace, that he has lost any property by wreck, or the rising of the waters, tempest, or other accident, and give a description of such property, and further, state that he has reason to suspect that such property so lost is secreted in the possession or custody of any person, such justice may issue his warrant to the constable of the township, describing such property in the warrant, requiring the constable to search for, and to take into his possession, such property when found; and if the claimant shall prove his title to such property thus found, before the justice issuing such warrant, then such justice shall cause the constable to deliver to such owner the property, he paying such fees as may be due such justice and constable for their services, which shall be the same as for like services in ordinary cases at law.

[Approved: February 21, 1838.]

CHAPTER 135.

SCHOOL LANDS.

SECTION
1. Commissioners to locate land in lieu of sixteenth section, to he appointed by county court—in what cases and their duties.
2. Certificate of appointment, and oath of commissioner.
3. Duties of commissioner and clerk, and effect of such location.

SEC. 1. In all cases where section number sixteen, in any township in this State, has been sold, or otherwise disposed of, by the United States, it shall be the duty of the county court of the county in which such sixteenth section lies, so soon as the said court is informed thereof, to appoint some fit and proper person, residing in the county, as commissioner, whose duty it shall be to select other lands equivalent thereto, and as contiguous as may be, for the use of the inhabitants of such township, for schools.

SEC. 2. When any person shall be appointed commissioner, under this act, it shall be the duty of the clerk of the court forthwith to make

out a certified copy of such appointment, under his official seal, and transmit the same to the commissioner so appointed; and it shall be the duty of the commissioner, before he enters on the duties of his office, to take an oath or make affirmation, before some judge or justice of the peace, to faithfully and impartially discharge the duties of the trust reposed in him as commissioner as aforesaid.

SEC. 3. It shall be the duty of the said commissioner, so soon as he has made the selection of the land instead of the sixteenth section, as aforesaid, to return the number thereof to the office of the clerk of the proper county court, who shall record the same, and transmit a copy thereof to the register and receiver of the land district in which his county lies; and if the said selection is approved of by the commissioner of the general land office, it shall be binding on the State of Arkansas and the inhabitants of the township for which the selection was so made; and the county commissioner shall be entitled to such fees for his services as may be allowed by the county court, to be paid out of the county treasury.

[Approved and in force: November 5, 1836.]

CHAPTER 136.

SEAL OF STATE.

SEC. 1. Governor to procure one; impressions, &c. thereon, and expenses, how paid.

SEC. 1. It shall be the duty of the governor to procure a seal of this State, which shall present impressions, emblems and devices similar to those on the seal of the late Territory of Arkansas, surrounded by the words "*Seal of the State of Arkansas;*" and the expense of procuring said seal shall be paid out of any money appropriated for the contingent expenses of the executive department.

[Approved and in force: October 29, 1836.]

CHAPTER 137.

SECURITIES.

SECTION
1. May require creditor to sue principal.
2. Suit not commenced, &c., security exonerated.
3. Limitation of two preceding sections.
4. Security paying, principal to refund.
5. Action therefor.
6. Security may recover excess of his proportion paid, from co-security.
7. Extent of such liability of co-security.
8. Security paying judgment, entitled to judgment against principal on motion.
9. Notice necessary, and limitation of such motion.
10. Securities of officers to be discharged on petition.
11. Requisites thereof, and how verified.
12. Notice of such petition, and how served.
13. When publication of notice sufficient.
14. Order for new bond and security, to be made.
15. New bond, how taken, approved, filed and recorded.
16. New bond how far to operate as discharge.
17. Remedy of security of officer against principal and co-securities.
18. Actions for remedies given by this act may be maintained against executors and administrators.

SEC. 1. Any person bound as security for another in any bond, bill or note, for the payment of money or the delivery of property, may at any time after action hath accrued thereon, by notice in writing, require the person having such right of action, forthwith to commence suit against the principal debtor, and other party liable.

SEC. 2. If such suit be not commenced within thirty days after the service of such notice, and proceeded in with due diligence in the ordinary course of law, to judgment and execution, such security shall be exonerated from liability to the person notified.

SEC. 3. The two preceding sections shall not extend, first, to the bond of any executor, administrator, guardian or other person given to secure the performance of his trust, or the duties of his office, nor, second, to any bond with collateral conditions, except bonds with collateral conditions exclusively for the payment of money or delivery of property, or exclusively for the performance of a covenant or agreement for the payment of money or delivery of property.

SEC. 4. When any bond, bill or note for the payment of money or delivery of property, shall not be paid by the principal debtor, according to the tenor thereof, and such bond, bill or note, or any part thereof, shall be paid by the security, the principal debtor shall refund

to the security the amount or value, with interest thereon, at the rate of ten per centum per annum, from the time of such payment.

SEC. 5. When such payment by a security shall be made in money, such security may recover the same with interest, in an action for so much money paid to the use of the defendant, and when payment is made in property he may recover the value, with the interest, in an action for so much property sold to the defendant.

SEC. 6. When there are two or more securities in such bond, bill or note, and any of them shall pay in money or property, more than his due proportion of the original demand, such security may recover such excess in the same form of action as herein provided for a security against the principal debtor.

SEC. 7. No such security shall be compelled in any such action as specified in the preceding section, to pay more than his due proportion of the original demand, and when such security shall have previously paid any part thereof, he shall be liable in such action to pay only so much as the amount already paid by him falls short of his due proportion of the original demand.

SEC. 8. In all cases where judgment is given in any circuit court upon any bond, bill or note, for the payment of money, or the delivery of property, against the principal debtor, and securities therein, and such security shall pay the judgment, or any part thereof, he shall be entitled, upon motion, to judgment in the same court against the principal debtor, for the amount he is entitled to recover, together with costs.

SEC. 9. No judgment shall be rendered as provided in the preceding section, unless the party applying therefor shall have given the adverse party at least ten days' notice in writing of such motion, nor unless such motion shall be made within one year from the rendition of the original judgment.

SEC. 10. Any person bound as a security in any bond given by an officer for the faithful performance of the duties of his office, may, on his petition in writing, adduced to the court authorized by law to take and approve such official bond, be discharged from all future liability on such official bond.

SEC. 11. Such petition shall set forth the facts upon which the application for a discharge is founded, and shall be verified by the affidavit of the petitioner.

SEC. 12. A notice in writing of such intended application, together with a copy of the petition, shall be personally served on the prin-

cipal in such bond, at least twenty days before the making of such application.

SEC. 13. If the principal in the bond shall have been absent from the State for the period of six months, the publication of such notice and petition in some newspaper printed in this State, for three successive weeks, shall be a sufficient service of such notice.

SEC. 14. The court to whom the petition is addressed shall hear the application, and may, on examination thereof, in their discretion make an order requiring the principal in such bond to give new bond and security for the performance of his official duties.

SEC. 15. If such bond and security is given, it shall be taken, approved, filed and recorded in the same manner that the official bond of such officer is required by law to be taken, approved and recorded.

SEC. 16. When such new bond is taken, approved and filed, it shall immediately operate as a discharge of all the securities in the former bond, from all liability arising from any subsequent misconduct or default of the principal therein; and such securities shall thenceforth be liable on such bond only for such breaches thereof as shall have happened prior to the taking, approving and filing of the new bond.

SEC. 17. Any person bound as a security in any bond given by an officer to secure the faithful performance of his duties, who shall pay any money he shall have been liable to pay by reason of such bond, shall have the same right and remedy against the principal and co-securities, as are provided in this act against principal and security in bonds, bills or notes, for the payment of money or the delivery of property.

SEC. 18. Actions for the remedies given by this act, may be maintained by and against executors and administrators, in all cases where they could be maintained by or against their testators or intestates.

[Approved: December 18, 1837.]

CHAPTER 138.

SENATORS.

SECTION
1. Of the United States, election for how held, returns of, and form of credentials.
SECTION
2. Credential of senator appointed temporarily.

SEC. 1. Whenever any election shall be held for senator or senators, in pursuance of the constitution of the United States, the two houses of the General Assembly shall assemble together, at such times and places as shall be agreed on by both houses, and, by joint vote, proceed to the election; and a majority of all the votes given shall be necessary to elect a senator. When the election is made, the president of the senate and speaker of the house of representatives shall certify the same to the governor, who shall cause a credential to be made out under his hand, with the seal of state affixed thereto, and cause it to be delivered to each senator; which credential shall be in the words following, to wit: "State of Arkansas, to wit: The General Assembly of this State, on the —— day of ——, one thousand eight hundred and ——, having, in pursuance with the constitution of the United States of America, chosen —— ——, a senator of the United States. Therefore, I, —— ——, governor of the State of Arkansas, do hereby certify the same to the senate of the United States. Given under my hand, and the seal of the State of Arkansas, this —— day of ——, one thousand eight hundred and ——."

SEC. 2. Whenever the governor shall, by virtue of the constitution of the United States, make a temporary appointment of a senator, he shall deliver to such senator a credential in the words following, to wit: "State of Arkansas, to wit: A. B., who was chosen United States senator for this State, in pursuance of the constitution of the United States of America, having died, (resigned, or otherwise, as the case may be,) during the recess of the General Assembly of the State: Therefore, I, —— ——, governor of said State, have thought fit to appoint —— ——, to fill the said vacancy. Given under my hand, and the seal of the said State, this —— day of ——, one thousand eight hundred and ——."

[Approved and in force: October 14, 1836.]

CHAPTER 139.

SET-OFF.

SECTION
1. Debts of different natures may be set off.
2. In suits by executors or administrators, debts against testator or intestate may be set off.
3. Judgments, bonds, &c. assigned to the defendant after suit commenced and writ served, shall not be set off.
4. Set-off may be given in evidence under the general issue, with notice, or pleaded in bar.
5. If the amount set off be equal to the plaintiff's demand, he shall recover nothing; if less, the residue.
6. If balance found due to defendant, judgment shall be rendered for him for the balance, and costs.
7. If plaintiff is indebted to defendant in any liquidated amount, and the same be not set off by defendant, he shall be afterwards barred from recovering costs.

SEC. 1. If two or more persons are mutually indebted to each other by judgments, bonds, bills, notes, bargains, promises, accounts, or the like, and one of them commence an action against the other, one debt may be set off against the other, although such debts may be of a different nature.

SEC. 2. In suits by executors or administrators, debts existing against their testators or intestates, and owing to the defendant at the time of the death of the testator or intestate, may be set off by the defendant, in the same manner as if the action had been brought by and in the name of the deceased.

SEC. 3. Judgments, bills, bonds, notes, or other writings assigned to the defendant after suit has been commenced against him and the writ served, shall not be allowed to be set off against the demands of the plaintiff.

SEC. 4. A set-off may be given in evidence under the general issue, or pleaded in bar; but when it is intended to be insisted on in evidence, notice shall be given at the time of pleading the general issue, of the demand so intended to be insisted upon, and upon what account the same became due.

SEC. 5. If the amount set off be equal to the plaintiff's demand, the plaintiff shall recover nothing by his action; if it be less than the plaintiff's demand, he shall have judgment for the residue only.

SEC. 6. If there be found a balance due from the plaintiff to the

defendant, judgment shall be rendered for the defendant for the amount thereof, together with costs.

SEC. 7. When any plaintiff shall be indebted to a defendant in any bond, bill, note, contract, book account, or other liquidated demand, and the defendant shall fail to set off such debt against the plaintiff's demand, such defendant shall be forever barred from recovering costs in any suit which he may thereafter institute upon any such bond, bill, note, contract, book account, or other liquidated demand.

[Approved: December 7, 1837.]

CHAPTER 140.

SHERIFFS.

SECTION

1. Election for, and term of service.
2. Bond of.
3. Bond to be filed and recorded.
4. Not to be void because not approved by court or endorsed by clerk.
5. On failure to give bond, office vacated.
6. Deputies, how appointed and approved.
7. Powers of deputies.
8. Powers of sheriff as conservator of the peace.
9. To certify recognizances taken.
10. Duties of, generally.
11. Penalty for misfeasance, malfeasance or nonfeasance.
12. Found guilty of misdemeanor, office to be vacated.
13. To take bail in criminal cases.
14. Now in office, how long to continue, &c.
15. Office of sheriff and coroner both vacant, sheriff *pro tem.* how appointed.

SEC. 1. The qualified voters of each county in this State shall, on the first Monday of October, in the year of our Lord one thousand eight hundred and thirtyeight, and every two years thereafter, elect one sheriff, who shall hold his office for the term of two years, and until his successor be elected and qualified.

SEC. 2. Each sheriff shall, within fifteen days after the receipt of his commission, enter into bond to the State of Arkansas, in any sum not less than five thousand, nor more than fifty thousand dollars, with good and sufficient security, to be approved by the county court, or the clerk thereof in vacation, subject to the approval or disapproval of the court in term, conditioned that he will well, truly and faithfully discharge and perform the duties of his office.

SEC. 3. Such bond shall be filed and recorded in the recorder's office of the county.

SEC. 4. No bond entered into by a sheriff shall be deemed void for not having the approval of the court or clerk endorsed thereon.

SEC. 5. If any sheriff shall fail to enter into bond within the time prescribed in this act, the office shall be deemed vacant, and it shall be the duty of the clerk of the county court to notify the governor of such vacancy.

SEC. 6. Each sheriff may appoint one or more deputies, for whose conduct he shall be responsible; and the appointment of each deputy shall be approved or confirmed by the circuit or county court; and such approval shall be entered on the record of the court.

SEC. 7. Every deputy sheriff appointed under the provisions of this act, shall possess all the powers of his principal, and may perform any of the duties required by law to be performed by the sheriff.

SEC. 8. Each sheriff shall be a conservator of the peace, in his county, and shall cause all offenders against the laws of this State, in his view or hearing, to enter into recognizance to keep the peace, and appear at the next term of the circuit court of the county; and on the failure of the offender to enter into recognizance, to commit him to jail.

SEC. 9. Each sheriff shall certify to the clerk of the circuit court all recognizances taken by him.

SEC. 10. It shall be the duty of each sheriff to quell and suppress all assaults and batteries, affrays, insurrections, and unlawful assemblies; and he shall apprehend and commit to jail all felons and other offenders; and he shall execute all process directed to him by legal authority, and shall attend upon all courts held in his county, and perform all other acts and things that are or may be required of him by law.

SEC. 11. If any sheriff shall fail or refuse to perform any of the duties required by law to be performed by him, he shall be deemed guilty of a misdemeanor in office, and on conviction thereof shall be removed from office.

SEC. 12. When any sheriff shall be found guilty of a misdemeanor in office, the court before whom the trial may have been had, shall declare the office of such sheriff vacant, and shall cause a record thereof to be made, a copy of which shall be transmitted to the governor.

SEC. 13. Every sheriff, when executing any writ of capias, in any criminal or penal case, which may by law be bailable, may take from the defendant a bond and security to the State, in any sum not less than one hundred, nor more than ten thousand dollars, conditioned

that he will be and appear at the circuit court of said county, at the next term thereof, then and there to answer the charges exhibited against him, and that he will not depart therefrom without leave of the court.

SEC. 14. All sheriffs, in office at the time of the taking effect of this act, shall continue in office until their successors are elected and qualified, and shall be subject to the provisions of this act.

SEC. 15. If the offices of sheriff and coroner shall both be vacant at any one time, the presiding judge of the county court shall appoint a sheriff *pro tempore*, who shall give bond in accordance with the provisions of this act, and shall perform all the duties of the office of sheriff, until the vacancy which he temporarily occupies is filled according to law.

[Approved: December 15, 1837.]

CHAPTER 141.

SLANDER.

SECTION
1. Words charging fornication or adultery, actionable.
2. Words charging swearing falsely, or amounting to such charge whether with reference to a judicial proceeding or not, actionable.

SEC. 1. If any person shall falsely use, utter or publish words, which in their common acceptation, shall amount to charge any person with having been guilty of fornication or adultery, such words so spoken shall be actionable.

SEC. 2. It shall be actionable, to charge any person with swearing falsely, or with having sworn false, or to use, utter, or publish words of, to, or concerning any person, which in their common acceptation amount to such a charge, whether the words be spoken in a conversation of and concerning a judicial proceeding or not.

[Approved: December 13, 1837.]

CHAPTER 142.

SLAVES.

SECTION
1. What slaves shall not be brought into, or held, purchased, hired, sold or disposed of, within this State.
2. Penalty for violation of provisions of first section.
3. To what cases such provisions not to apply.
4. Penalty for hiring or harboring such slaves.
5. For hiring one slave to another, or permitting him to hire his own time or act as a free person.
6. Duty of officers to arrest slaves in such case.
7. Justice to issue warrant for, upon information.
8. Such slave to be committed.
9. Owner not appearing, publication to be made.
10. When and on what terms such slaves to be delivered to owner.
11. Recognizance to be entered into by owner, and form and condition thereof.
12. Owner not appearing, slave to be sold.
13. Proceeds of such sale, how to be applied.
14. Owner of such slave not thereby exempted from fine.
15. *Slave* selling liquors to another slave, how to be punished.
16. How to be proceeded against therefor.
17. After conviction therefor, to be committed, unless master will pay costs and enter into recognizance, and form thereof.
18. When committed, how to be discharged.

SECTION
19. Master not appearing, &c. to be sold, and proceeds of sale, how applied.
20. *Slave*, punishment of, for harboring and concealing slave.
21. Slave abroad without pass, how punished.
22. Slave upon plantation without permission in writing.
23. Slave keeping weapons, the same to be forfeited, and punishment for.
24. Riots of, &c. and seditious speeches, how punished.
25. Penalty for permitting slaves to stay on premises.
26. For permitting more than five to be on premises.
27. For white person, free negro or mulatto, found in company with slaves, &c.
28. Justice to issue warrant for apprehension of persons holding unlawful assemblies.
29. Sheriffs, coroners, and constables, to suppress same, and apprehend offenders.
30. Penalty for neglect or refusal.
31. Punishment of slave disturbing religious congregation.
32. Penalty for masters, &c. of boats, &c. carrying slaves out of State, and how recovered.
33. Penalty for dealing with slaves.
34. Persons may be restrained by injunction from carrying out of State slaves not their own.
35. Meaning of word "*Master*," in this act.

SEC. 1. No person shall knowingly bring or cause to be brought into this State, or hold, purchase, hire, sell, or otherwise dispose of within the same; first, any slave who may have committed in any other State, Territory or district within the United States, or in any foreign

country, any offence, which if committed within this State, would according to the laws thereof, be a felony or infamous crime ; or, second, any slave who shall have been convicted in this State, of any felony or infamous crime, and ordered to be taken or removed out of the State, according to the laws thereof ; or, third, any slave who shall have actually been removed out of this State after a conviction of felony or other infamous crime, although no order of removal shall have been made ; or, fourth, any person or the descendant of any person who shall have been imported into the United States, or any of the Territories thereof, in contravention of the laws of the United States, and held as a slave.

SEC. 2. Every person who shall violate any of the provisions of the preceding sections, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five hundred, nor exceeding five thousand dollars.

SEC. 3. Nothing in the preceding sections shall be so construed as to prevent any person from bringing into this State any slave for the purpose only of passing through the same, or for abiding therein not exceeding six months ; and who, during the time he shall remain therein, shall be kept in the employment of the person by whom he was brought into the State, and not sold or hired to labor therein.

SEC. 4. Every person who shall knowingly hire, harbor or employ any slave brought into this State in violation of the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five dollars for every day such person may be hired, employed or harbored by him.

SEC. 5. Every owner or master of a slave, who shall hire such slave to any other slave, or to any free negro or mulatto, or permit or suffer such slave to go at large, upon a hiring of his own time, or to act or deal as a free person, within this State, shall be fined not less than twenty, nor more than one hundred dollars.

SEC. 6. Whenever any sheriff, coroner or constable shall discover within his county any slave going at large, or hired contrary to the provisions of the preceding section, it shall be his duty, and it shall be lawful for any other person, to arrest any such slave and take him before any justice of the peace without warrant.

SEC. 7. When any justice of the peace shall receive satisfactory information that any such slave is going at large, or hired within his county, he shall immediately issue his warrant to apprehend and bring such slave before him.

SEC. 8. Whenever any slave shall be arrested and brought before any magistrate under the foregoing provisions, said magistrate shall inquire into the facts, and if it shall appear that such slave has been going at large, or hired contrary to any of the provisions of this act, he shall commit such slave to the county jail, there to remain until discharged by due course of law.

SEC. 9. If the owner of such slave shall not appear and comply with the terms of this act, within ten days after such commitment, the sheriff shall publish for three weeks successively in some newspaper printed in this State, an advertisement containing a description of such slave, the cause of commitment, and the name of the owner if known.

SEC. 10. Such slave may be delivered to the owner by order of the county court, or the presiding judge thereof in vacation, if application be made on or before the second day of the first term of said court, to be holden after the publication of the advertisement required to be published by the preceding section; such applicant first paying the costs and expenses of the proceedings, and entering into recognizance as provided in the next section.

SEC. 11. Such recognizance shall be in the sum of five hundred dollars, with good and sufficient security to be approved by the court or judge, conditioned that such slave shall not again go at large, or be hired contrary to the provisions of this act; and if the owner of the slave be not a resident of this State, the recognizance shall contain a further condition that such slave shall be removed out of the State without delay.

SEC. 12. If the owner of such slave do not appear within the time prescribed by this act, and comply with the terms of the preceding sections, the county court shall make an order for the sale of such slave, which shall be executed by the sheriff, who shall proceed therein as in the sale of slaves under execution.

SEC. 13. The proceeds of such sale shall be first applied, to the payment of all costs and expenses, including five per centum to the sheriff, for his commission; one fourth of the residue shall be paid into the county treasury for the use of the county, and the other three fourths shall be paid to the owner of such slave on his application to the court therefor.

SEC. 14. Nothing in the preceding eight sections shall be construed so as to discharge or exempt the owner of any such slave from any fine herein before declared for a violation of the provisions of this act.

SEC. 15. If any slave shall sell, barter or deliver, to any other slave any vinous or spirituous liquors, he shall be punished by stripes not exceeding twentyfive, and shall stand committed until he be discharged in the manner hereinafter directed.

SEC. 16. Every slave charged with the commission of the offence specified in the preceding section, shall be tried and proceeded against in the circuit court by indictment.

SEC. 17. Upon the conviction of any such slave, he shall after the execution of the sentence be committed to jail, unless his master will pay the costs and enter into a recognizance in any sum not less than one hundred dollars, conditioned for the good behavior of such slave for one year, and that during that time he will not violate the provisions of the fifteenth section of this act.

SEC. 18. When a slave shall be committed for the want of such recognizance, he may be discharged by the circuit court or the presiding judge of the county court, on the application of the master or owner, and his entering into recognizance as specified in the preceding section, and paying all the costs and expenses.

SEC. 19. If the master or owner of such slave do not appear and comply with the terms specified in the preceding section, on or before the second day of the circuit court next to be held after the commitment, such slave shall be sold, and the proceeds of such sale applied as specified in the thirteenth section of this act.

SEC. 20. Every slave who shall harbor or conceal any slave, who shall have absented or deserted the service of his master, overseer or employer, shall be punished by stripes not exceeding twentyfive, by the order of any justice of the peace.

SEC. 21. If any slave shall go from the premises or tenements of his master or other person with whom he resides, without a pass, or some letter or token, whereby it may appear that he is proceeding by the authority of his master, employer or overseer, he may be apprehended by any person, and being taken before a justice of the peace, shall by order of such justice, by punished with stripes not exceeding twentyfive.

SEC. 22. If any slave shall come and be upon the plantation of any person without permission in writing from his owner, employer or overseer, not being sent upon lawful business, the owner or occupier of such plantation may cause such slave to be punished with stripes not exceeding twentyfive for every such offence.

SEC. 23. Any gun or other offensive or defensive weapon found

in the possession of a slave, without having the written permission of his master to carry the same, may be seized by any person, and upon proof of such seizure before a justice of the peace of the county where the same shall have been made, such gun or weapon shall be by the order of such justice, adjudged and forfeited to the seizor for his own use, and such slave shall receive by the order of such justice, any number of stripes not exceeding thirty.

SEC. 24. All riots, routs, unlawful assemblies and seditious speeches of slaves shall be punished with stripes by the order of any justice of the peace, and it shall be lawful for any person without further warrant to apprehend slaves so offending, and take them before some justice of the peace.

SEC. 25. If any master or overseer of a family shall knowingly permit or suffer any slave not belonging to him or under his control, to be and remain on his premises more than four hours at any one time, without the consent or permission of the owner, employer, or overseer of such slave, such master or overseer so permitting, shall forfeit and pay to the owner, employer or overseer of such slave, five dollars for every such offence, to be recovered before a justice of the peace, by an action of debt on this statute.

SEC. 26. If any owner or overseer of a plantation shall permit or suffer more than five slaves other than his own to be and remain on his plantation, or in any house attached thereto, at any one time with or without the consent of the master or overseer of such slaves, he shall forfeit and pay to the informer one dollar for every slave above that number, to be recovered by an action of debt, unless such slaves may have met together on Sunday at public worship, or on any other day for the purpose of laboring or on some other lawful occasion.

SEC. 27. If any white person, or free negro or mulatto, shall be found in the company of slaves, at any unlawful meeting, or shall harbor or entertain any slave, or shall be found drinking or gaming with any slave, without the consent of the owner or overseer of such slaves, such white person, free negro, or mulatto shall forfeit and pay any sum not exceeding one hundred dollars, and shall receive any number of stripes not exceeding thirty.

SEC. 28. Every justice of the peace, upon his own knowledge of any unlawful meeting of slaves, white men, free negroes and mulattoes, or on information thereof, shall forthwith issue his warrant to apprehend such slaves, white men, free negroes or mulattoes, and cause them to be brought before himself or some other justice of the peace, to be dealt with according to law.

SEC. 29. Sheriffs, coroners and constables, upon a knowledge or on information of any unlawful meeting of slaves, white men, free negroes or mulattoes, or of any riot, rout, or unlawful assembly of slaves, shall suppress the same, and without warrant take the offenders before some justice of the peace of the county, to be dealt with according to law.

SEC. 30. Any sheriff, coroner or constable, who upon knowledge or information, as prescribed in the preceding section, shall neglect or refuse to comply with the requisitions of the foregoing section, shall for every such offence forfeit to the informer ten dollars to be recovered by action of debt.

SEC. 31. Any slave who shall by noise, riotous or disorderly conduct, or otherwise, disturb any religious congregation assembled for the purpose of public worship, may be apprehended by any person, and forthwith taken before some justice of the peace of the county, who shall examine into the truth of the charges, and on being satisfied of the truth thereof, shall cause such slave to be punished with any number of stripes not exceeding thirty.

SEC. 32. Any master, commander or owner of any steamboat, or any other vessel, who shall transport or carry any servant or slave out of this State in such steamboat or vessel, without the consent of the person to whom such servant or slave doth of right belong, or who has authority to grant such permission, shall forfeit and pay to the owner of such slave the sum of five hundred dollars, to be recovered by action of debt on this statute, without prejudice to the right of such owner to recover the value of such slave in an action therefor.

SEC. 33. If any person shall buy, sell, or receive of, to, or from a slave any commodity whatever, without the consent of the master, owner or overseer of such slave, first had and obtained, or shall deal with any slave without such consent, such person shall forfeit to the master or overseer of such slave, any sum not less than ten dollars for every such offence, and also the sum of twenty dollars to the county.

SEC. 34. Any person migrating beyond the bounds of this State, who shall have in his possession any slave or other personal property, the absolute title of which is not in such person, may be restrained from removing such slave or other property out of the State, by a writ of injunction.

SEC. 35. The term "master," as used in this act shall be construed to include every person who at the time, shall have the possession and

control of a slave, whether he be owner or bailee, or have the general or special property in his own right or in right of another.

[Approved: February 24, 1838.]

CHAPTER 143.

SPECIAL JUDGES.

SECTION
1. To be allowed one hundred dollars for each term held by them.
2. How to be paid.

SEC. 1. Whenever the governor has appointed or may hereafter appoint any special judge, to hold a special term of the circuit court in any county in this State, such judge shall be allowed the sum of one hundred dollars for each term of the court held by him when so appointed.

SEC. 2. Such sum shall be paid by the treasurer on the auditor's warrant, out of any money in the treasury not otherwise appropriated.

[Approved and in force: December 15, 1837.]

CHAPTER 144.

STATE LIBRARY.

SECTION
1. Secretary of state to be librarian, and his duties.
2. What books to be bound.
3. Books to be kept in state house.
4. Librarian to procure missing copies.
5. To purchase books, maps and charts.
6. Expenses, how paid.
7. Librarian's accounts, how adjusted, and warrants for.
8. Who may remove books from library.
9. Receipt to be given when books removed.
10. Penalty for injuring or retaining books.
11. Citizens or strangers, how introduced into library.

SEC. 1. The secretary of state shall be librarian for the State library, and shall have the custody and direction of all books, papers, maps, charts, and all other things belonging to the same, and he shall take special care that none of them be lost or injured.

SEC. 2. He shall cause to be bound, if not already done, in a cheap and substantial manner, three copies of each of the following works; the acts of each session of congress, the acts of the General Assembly of this State, and the acts of every other State of the United States, and state papers and documents of the United States.

SEC. 3. The librarian shall cause all such books now owned by the State, and such as hereafter may be acquired by it, to be thus prepared, arranged and kept in a convenient room in the state house.

SEC. 4. Where there shall be a deficiency in any of the acts, journals, or other works, it shall be the duty of the librarian to correspond with the proper officer, for the purpose of procuring copies of the different works, and if not otherwise procured, he shall purchase them, and place them in the library.

SEC. 5. It shall be the duty of the librarian, under the direction of the governor, to purchase all such books, maps and charts, as may from time to time be directed to be purchased by the General Assembly.

SEC. 6. All expenses of procuring such copies of acts, journals and other works as are mentioned in this act, shall be paid out of the contingent fund of the General Assembly.

SEC. 7. The auditor of public accounts shall adjust the accounts of the librarian, and draw warrants for the payment of the same.

SEC. 8. No person shall be permitted to remove any book from the library except the governor, the auditor and treasurer, the members of the General Assembly, judges of the supreme and circuit courts, and the attorneys for the State.

SEC. 9. No person shall be permitted to remove any book from the library without giving a receipt therefor to the librarian.

SEC. 10. If any person injure or fail to return any book, map or chart, taken from the library, for more than three months, he shall forfeit and pay to the librarian for the use and benefit of the library, three times the value thereof, or of the set to which it belongs, to be recovered in the name of the State, for the use of the library, before any justice of the peace having jurisdiction thereof.

SEC. 11. The officers of the several departments of the State, who are entitled to the use of the library, may introduce citizens or strangers into the library, who shall have the privilege, during all seasonable hours, to read any of the books therein.

[Approved: March 3, 1838.]

CHAPTER 145.

STATE SOVEREIGNTY.

SECTION
1. *Penalty* for holding commission, &c. under foreign government.
2. Penalty for favoring or encouraging extension of foreign jurisdiction over any part of this State.
3. Power of sheriff or coroner to call out militia, and penalty for officer refusing to obey.
4. Militia so called out, how to be armed, equipped, paid, &c.
5. Requisitions made by sheriff or coroner, to be under control of governor.
Militia, how mustered into service, pay of, how to be drawn, term of service of.
6. When commanding officer may draft.
SECTION
7. Person summoned in aid of sheriff or coroner, and refusing, penalty for and how recovered.
8. Person arrested to give recognizance or be committed—Duty of sheriffs and jailers as to such committal—Condition of recognizance.
9. Fees under this act, what, and how collected.
10. Appropriation, for expenses under this act.
11. Power of governor, and when he may organize the militia, and march into disaffected country.
12. Specific appropriation for such purpose.

SEC. 1. Each and every person, in this State, who may, after the passage of this act, hold any commission, office, or authority, or attempt to hold or exercise any office or authority, under any foreign government, within this State, shall be deemed guilty of a misdemeanor, and liable to indictment therefor in the circuit court of the proper county; and, on conviction thereof, shall be fined in a sum not less than one hundred dollars, nor more than one thousand dollars, and be imprisoned not less than one month, nor more than twelve months.

SEC. 2. Each and every person, within this State, who may, by any act or deed, or by words, encourage or favor the extension and exercise of the laws and jurisdiction of any foreign power over any part or portion of this State, however small, shall be deemed guilty of a misdemeanor, and, on conviction thereof, by indictment, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, and be imprisoned not less than than one month, nor more than twelve months.

SEC. 3. The sheriff or coroner, as the case may be, of any county, shall not only have power to call to his assistance every man to aid him in discharge of his duty in the execution of the laws of this

State, but shall be, and is hereby, authorized and empowered to make a requisition upon any officer commanding a regiment or battalion of militia, or brigadier or major general of militia, within this State, for such number of men as may be necessary to suppress all resistance to his authority in the execution of the laws of this State within any county; and any officer refusing to furnish the quota of men thus required, may be arrested, tried by a court martial, and cashiered therefor.

SEC. 4. Such bodies of militia called out in aid of the sheriff of any county, shall be mounted if practicable, shall furnish their own horses and arms, be organized according to the existing laws of this State, have their provisions and supplies furnished at the expense of the State, and receive the same pay as infantry soldiers in the United States service, with the addition of twelve dollars a month for the use and risk of the horse upon which each militia man may be mounted.

SEC. 5. Such requisitions so made by the sheriff or coroner, shall always be subject to be curtailed, enlarged, or countermanded, or others made, by the governor; and such bodies of militia shall, in all cases, be organized and mustered into service by some commanding officer of a regiment or separate battalion, or brigadier or major general, or by the governor, or some officer of the governor's staff, under his orders; and the certificate of the mustering officer, together with a certificate of the commanding officer of the corps, countersigned by the sheriff or coroner, of the period and character of such service, or a regular muster roll and pay roll, certified in like manner, shall, in all cases, be necessary to authorize such militia men to draw their pay from the proper disbursing officer. Such militia shall in no case be retained in service more than six months, unless by their consent.

SEC. 6. Where such requisitions cannot be filled by volunteer enlistment, the commanding officer shall proceed to draft a sufficient number, according to the laws of this State in such case provided; and officers, non-commissioned officers, and musicians, shall be entitled to pay according to rank.

SEC. 7. Any resident or citizen of any county, who may be summoned by said sheriff or coroner to aid him in the execution of process therein, or in any discharge of official duty, and neglect or refuse to render such aid, shall, on conviction thereof, by indictment, be fined not less than one hundred dollars, nor more than one thousand dollars, and be imprisoned not less than one month, nor more than twelve months; and on such refusal to aid, the sheriff or coroner may imme-

diately seize such offender, and commit him to prison, unless he enter into recognizance, according to law.

SEC. 8. When said sheriff or coroner may arrest any offender against any of the provisions of this act, unless he shall enter into a recognizance, with two or more sufficient securities, in at least double the highest sum fixed as a penalty for the offence, it shall be his duty, immediately to commit such offender to prison for safe keeping; and he shall have power to send him to any prison within the State; and it is hereby made the duty of all jailers to receive, and safely keep, all such prisoners as may be thus committed to their respective charge; and all recognizances thus taken, shall, in addition to the usual condition, contain an obligation that the offender will, in the mean time, demean himself as an orderly citizen, and faithfully obey the laws of this State.

SEC. 9. The said sheriff or coroner of any county, shall, for services rendered under this act, or in connection with any duty specified herein, or in any manner relating to any of the offences herein specified, receive, in each and every case, double the amount of fees and double the amount of mileage allowed by law to sheriffs for similar services; and when duties required by this act to be performed, are different from any defined services for which fees are fixed by law, they shall be assimilated to those which bear most resemblance to them, and double fees and mileage allowed accordingly. Such fees, in cases of indictment and conviction, shall be paid by the offender, if he have an estate sufficient. Where the estate of the offender is insufficient, and in all other cases, such fees of the sheriff or coroner shall be paid out of the State treasury; and in all cases where they are to be paid by the State, they shall be first allowed and certified by the judge of the circuit court of the county, upon which certificate the auditor shall issue a warrant therefor, and the treasurer pay the same; and all constables, justices of the peace, clerks, and other civil officers of said county entitled to fees, shall exact and receive double fees for all services connected with the offences or duties prescribed by this act, to be paid and collected as in ordinary cases.

SEC. 10. To defray the expenses of calling out, supplying, and paying militia called out under requisitions as above prescribed, the sum of twelve thousand dollars is hereby appropriated and placed at the disposal of the governor, to be drawn by his order, and disbursed by his order, according to law, for the purposes above prescribed;

and the further sum of two thousand dollars is hereby appropriated to pay sheriff's fees, and other contingent expenses.

SEC. 11. The governor is hereby authorized, and it is made his duty, to superintend, generally, everything required to be done by this act, and see that every branch of the service is properly conducted, and to see that the laws of this State are fully and efficiently enforced throughout the utmost limits thereof; and if the laws cannot be enforced by ordinary means, nor by the means herein before prescribed, it is hereby made the duty of the governor, as soon as it is made appear to be necessary, to order out, organize, and embody, such number of the militia of this State as the service may require, and with military force take possession of the country, and expel therefrom, or seize and bring to trial, all disorganizers and disaffected persons, without delay, and keep possession of all such country by force, until order is restored, and the sovereignty and laws of Arkansas acknowledged and obeyed.

SEC. 12. For the purpose of carrying into effect the object and directions of the section last preceding, the further sum of fifty thousand dollars shall be, and the same is hereby, appropriated, and placed at the disposal of the governor, to be drawn from the treasury under warrants from the auditor, to be issued on requisitions of the governor, for the purposes specified in the preceding section, and for no other purpose.

[Approved and in force: March 3, 1838.]

CHAPTER 146.

STATUTES.

SEC. 1. When a repealing statute is repealed, the first statute not thereby revived unless by express words.

SEC. 1. When a statute shall be repealed and the repealing statute shall afterwards be repealed, the first statute shall not thereby be revived, unless by express words.

[Approved: November 23, 1837.]

CHAPTER 417.

SUITS BY AND AGAINST THE STATE.

SECTION
1. Suits against, where to be brought, and how.
2. Process in, and how executed.
3. Who shall defend.
4. Suits by the State, where to be brought and by whom prosecuted.
5. How prosecuted and defended.
6. Judgment obtained against the State, how to be satisfied.
7. Appeals and writs of error to be granted on demand, when judgment is rendered against the State.
8. Not to preclude claimants from making application to the General Assembly in the first instance.

SEC. 1. All actions against the State shall be brought in the circuit court of the county in which the seat of government is situated, and be against the State by name.

SEC. 2. The process in all actions against the State shall be a summons, and shall be executed by the officer to whom it may be directed delivering a copy thereof to the auditor of public accounts.

SEC. 3. The attorney for the State prosecuting in the circuit in which the seat of government is situated shall defend all suits against the State.

SEC. 4. All actions in favor of and in which the State is interested, shall be brought in the name of the State, in the circuit court of the county in which the defendant may reside or be found, and shall be prosecuted by the attorney for the State prosecuting in such circuit.

SEC. 5. All actions by or against the State shall be prosecuted and defended, proceeded in and conducted to final judgment in the same manner as actions by and against individuals.

SEC. 6. When judgment shall be rendered against the State, it shall be the duty of the auditor of public accounts to transmit to the General Assembly, a copy of such judgment and the proceedings therein, and an appropriation shall be made to satisfy the same.

SEC. 7. Appeals and writs of error shall be allowed in all cases on demand, when judgment may have been rendered against the State.

SEC. 8. Nothing in this act shall be so construed as to preclude any person having a claim against the State, from making application to the General Assembly for payment thereof in the first instance.

[Approved: November 29, 1837.]

CHAPTER 148.

TAVERNS AND GROCERIES.

SECTION.
1. County courts to grant licenses for.
2. No person to keep, without license.
3. No tavern to be kept, without.
4. What persons may keep house of private entertainment.
5. In what manner persons must proceed to obtain tavern license.
6. County court, before granting such license, shall assess yearly tax, and amount thereof.
7. After tax paid, and receipt of treasurer produced, license to be granted.
8. Proceedings to obtain license for grocery or dram shops.
9. Person having license, and permitting gaming, penalty for.
10. Permitting quarrelling, &c., penalty for.
11. No debt recoverable at law for ardent spirits purchased in small quantities.
12. Penalty for selling or giving liquor to negro, mulatto or U. S. soldier.
13. This act not to affect grocers who do not retail spirits in small quantities.
14. Penalty for violating other provisions of this act.

SEC. 1. The several county courts are authorized to grant tavern and grocery licenses within their respective counties, to continue in force for one year, and to renew the same from time to time, as may be required.

SEC. 2. No person shall keep any tavern or grocery for the retail of vinous or ardent spirits, by quantities less than one quart, unless he shall first obtain a license from the county court of his county, authorizing him to exercise the privilege of a tavern keeper or grocery keeper.

SEC. 3. All persons keeping a public tavern, whether they retail spirituous or vinous liquors or not, shall first procure a license for that purpose from the county court of his county.

SEC. 4. Persons who live on any road in the country, may keep a house of private entertainment, and furnish diet and lodging to travellers and others, and provender and pasturage for horses and the like, without obtaining any tavern license, so that such person shall not sell, barter, or suffer to be sold or bartered, any vinous or ardent spirits on his account.

SEC. 5. Any person wishing to keep a tavern shall apply to the county court, by petition, setting forth the place where he wishes to keep tavern, and the extent of his means of accommodation of persons, and the extent of stables for horses and the like, and if the coun-

ty court be satisfied that the public convenience will be promoted by such tavern being so kept, and that the means of accommodation are sufficient for the purpose proposed, the court may grant such applicant a license to keep the tavern prayed for.

SEC. 6. The county court, on examination of any petition for the privilege of keeping a tavern, if satisfied that such license should be granted, shall assess the amount of tax to be paid yearly for such privilege, which shall not be less than ten dollars nor more than one hundred dollars.

SEC. 7. When such tax shall be assessed by the county court, the applicant shall pay the amount to the county treasurer of his county, and on producing the treasurer's receipt, such license shall be granted in such form as shall be prescribed by the county court.

SEC. 8. If any person wishes to establish any grocery or dram shop, he shall petition in like manner as for a tavern license, and pay the same tax in the same manner.

SEC. 9. If any person having a license to keep a tavern or dram shop, shall knowingly permit any person to play at any game of cards, dice or other gaming device, within his house, out-houses, curtilage or inclosure, he shall be deemed guilty of a misdemeanor, and on conviction, in addition to the punishment prescribed by law for such offence, his license shall be cancelled.

SEC. 10. If any tavern keeper or grocery or dram shop keeper shall permit any quarrelling, fighting, or other disorderly conduct in his tavern or grocery, he shall be deemed guilty of keeping a disorderly house, and on conviction his license shall be cancelled, and he shall be fined at the discretion of the court, in any sum not exceeding fifty dollars.

SEC. 11. To prevent the accumulation of small debts at taverns or groceries, no debt shall be recoverable at law for ardent spirits purchased at a tavern or grocery in quantities less than a quart at a time.

SEC. 12. No person keeping a tavern or grocery shall sell or give to any negro or mulatto slave any ardent spirits, without the permission of his master or overseer, nor shall any such tavern or grocery keeper give or sell any ardent spirits to any regular soldier of the United States army, without the consent of an officer of such army. Any person offending against the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding one hundred dollars, and his license cancelled.

SEC. 13. This act shall not be construed to affect any person who

carries on the business of a grocer, under a license from the proper authority, and who does not retail spirits in quantities less than a quart.

SEC. 14. If any person shall violate any of the provisions of this act, for which no specific penalty is provided, such person shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding fifty dollars.

[Approved: February 16, 1838.]

CHAPTER 149.

TAX TITLES.

SECTION

1. To lands, by whom confirmed.
2. Publication, of notice to claimants to come forward.
3. What shall be evidence of such publication.
4. In what case the court shall confirm or annul the tax title.
5. Effect of sheriff's or auditor's deed, without witnesses, as evidence.
6. Effect of confirmation.
7. Costs thereof, how paid.
8. Duty of persons setting up claim to military bounty lands redeemed.
9. Holder thereof to appoint agent, in what cases, and how, and how claimant may proceed where there is no agent.
10. Affidavit that there is no agent, must be filed, or suit will be dismissed.
11. Upon judgment against purchaser, damages to be assessed, and to be a lien on the land.
12. Purchaser not obtaining a confirmation, effect of sale under which he claims.
13. Application of existing laws as to taxation of military bounty lands.

SEC. 1. The purchasers, or the heirs and legal representatives of purchasers, of lands at sheriff's sales, those made by the auditor of this State, in pursuance of any of the laws thereof, or those made by the order, decree, or authority, of any court of record, may protect themselves from eviction of the lands so purchased, or from any responsibility as possessors of the same, by pursuing the rules hereinafter prescribed.

SEC. 2. The purchasers, or the heirs and legal representatives of purchasers, at all such sales, which have been or may hereafter be made, may, when such lands are not made redeemable by any of the laws of this State applicable to such sales, or if redeemable, may, at

any time, after the expiration of the time allowed for such redemption, publish, six weeks in succession, in some newspaper published at the city of Little Rock, a notice calling on all persons who can set up any right to the lands so purchased, in consequence of any informality or any irregularity or illegality connected with such sale, to show cause, at the first circuit court which may be held for the county in which such lands are situated, six months after the publication of said notice, why the sale so made should not be confirmed, which notice shall state the authority under which the sale took place, and also, contain the same description of the lands purchased as that given in the conveyance to the buyer, and shall further declare the price at which the land was bought, and the nature of the title by which it is held.

SEC. 3. The affidavit of one or more of the publishers or proprietors of said newspaper, setting forth a copy of such notice, with the date of the first publication thereof, and number of insertions, sworn to and subscribed before some justice of the peace of the county or city in which said newspaper is published, with a certificate of magistracy from the clerk of the court of said county, under the seal of his office, on being produced to said court, shall be taken and considered as sufficient evidence of the fact of publication, the date and number of insertions, and form of such notice.

SEC. 4. On producing the proof of said notice, as required in the preceding section, the party publishing the same may apply to the judge of the court aforesaid to confirm said sale; and it shall be the duty of the judge, in case no cause is shown against the prayer of said purchaser, to confirm the sale in question: *Provided always*, that before he does so confirm it, he shall be fully satisfied that said notice is in due form, that it has been regularly published, that the land has been correctly described, and the price at which it was purchased truly stated, in conformity to the provisions of this act; but in case opposition be made, and it shall appear that the sale has been made contrary to law, it shall then be the duty of the judge to annul it.

SEC. 5. A sheriff's or auditor's deed, given in the usual form, without witnesses, shall be taken and considered by said court as sufficient evidence of the authority under which said sale was made, the description of the land, and the price at which it was purchased.

SEC. 6. The judgment or decree of the court confirming said sale, shall operate as a complete bar against any and all persons who may thereafter claim said land in consequence of informality or illegality in the proceedings; and the title to said land shall be considered as con-

firmed and complete in the purchaser thereof, his heirs and assigns, forever, saving, however, to infants, persons of unsound mind, imprisoned beyond seas, or out of the jurisdiction of the United States, the right to appear and contest the title to said land, within one year after their disabilities may be removed.

SEC. 7. When no opposition is made to the confirmation of such sale, the costs attending the proceedings shall be paid by the party praying such confirmation; and where opposition is made, the costs shall be borne by the party against whom judgment is rendered.

SEC. 8. In relation to military bounty lands redeemed from the auditor of this State, for the non-payment of taxes, by virtue of an act entitled "An act providing for the redemption of military bounty lands which have been, or may from time to time be owned by the Territory of Arkansas five years and upwards, and for other purposes," approved November 3, 1835, the original patentee or patentees, his, her or their heirs or assigns, claiming said lands, shall, before the issuing of any writ, file in the office of the clerk of the proper court, an affidavit, setting forth that such claimant hath tendered to the purchaser or purchasers thereof, his, her or their agent or legal representative, the full amount of all taxes and costs paid on account of said land, with interest on the same at the rate of twentyfive per cent. per annum from the time said taxes and costs were paid, and, also, the full value of all improvements made on said lands by the purchaser or purchasers thereof, his, her or their heirs, assigns or tenants, and that the same hath been refused.

SEC. 9. It shall be the duty of any person or persons holding any of said military bounty lands redeemed by virtue of the act aforesaid, in the event of absence from, or non-residence in, the county in which said lands are situated, to leave a known agent in said county, to whom the tender named in the preceding section of this act may be made; the appointment of which agent shall be made in writing, duly authenticated, and recorded by the clerk of the court of said county, in a book which he shall keep for that purpose, for which services the said clerk shall receive his usual recording fees; and in all such cases, where the holder or holders of such redeemed lands shall be absent or non-resident as aforesaid, and shall leave no agent or legal representative, as required in this act, the original patentee or patentees, his, her or their heirs or legal representatives, shall, on filing in the office of the clerk of the court of the proper county, an affidavit, setting forth

these facts, be allowed to obtain process and institute suit for said land, as though no tender had been required.

SEC. 10. If suit or action shall be brought in any court of record in this State, against any purchaser or purchasers of said military bounty lands, his, her, or their heirs or assigns, redeemed from said auditor, and it shall appear that an affidavit, as required in the preceding section of this act, was not filed previous to the commencement thereof, it shall be the duty of the court to dismiss said suit or action, at the costs of the plaintiff or plaintiffs.

SEC. 11. If judgment shall be given against any such purchaser or purchasers, his, her, or their heirs or assigns, who hold any of said military bounty lands thus redeemed, in favor of any original patentee or patentees, his, her, or their heirs or assigns, damages shall be assessed in favor of said defendants, for the full amount of taxes, costs, and interest, herein before specified, with the full value of all improvements made thereon, for which judgment shall be entered in favor of said defendant or defendants, and the same declared a lien upon such property.

SEC. 12. In case any such purchaser or purchasers contemplated in any of the provisions of this act, his, her, or their heirs or assigns, shall not deem it necessary to use the remedy conferred by this act, to confirm the title thereto, then the said sale shall have the same effect only as is now given to it by the existing laws of this State.

SEC. 13. The existing acts in relation to the redemption of, and collection of taxes on, military bounty lands, shall be applicable also to entered lands, and lands of every other description, which may have been stricken off to the Territory or State for the non-payment of taxes thereon: *Provided*, that such parts of said acts, and of all other acts, as may be inconsistent with the provisions of this act, be, and the same are hereby repealed.

[Approved: November 3, 1836.]

CHAPTER 150.

TOLL BRIDGES.

SECTION
1. County courts to grant privilege of building.
2. To fix rate of toll, and see to keeping in repair.
3. What privileges to vest by order of such court.
SECTION
4. Bridge first granted, not to be interfered with, nor more than one to be built over the same stream on the same road.

SEC. 1. The several county courts in this State are hereby authorized, and fully empowered, to grant privileges to any person or persons to build toll bridges over any bay or creek, lake, river or swamp on any public road or highway in their respective counties.

SEC. 2. The county courts shall have full power, and they are required, to fix the rate of toll for crossing any bridge authorized to be built by this act, and to require the same to be kept in good repair, in as full a manner, and in every respect, as they have power by law over ferries.

SEC. 3. All privileges granted to any person or persons, to build any bridge or bridges, by virtue of this act, shall vest in the person or persons to whom they are granted, and to their heirs and assigns, all the rights and privileges specified or set forth in the grant or order of court authorizing the building of the bridge or bridges specified in said grant or order, for the full time for which the same is granted or ordered.

SEC. 4. The court shall not have power, in any case where there has been any previous grant or order to any person to build a bridge, by the provisions of this act, to grant or permit any other person or persons to build any bridge that will in any way interfere with the privileges secured to the first person building a bridge under the provisions of this act, nor shall any court have power to grant an order or permission to build more than one bridge for the crossing of any one stream on the same road.

[Approved and in force: December 18, 1837.]

CHAPTER 151.

TOWNS.

SECTION
1. In what cases, and upon what proceeding, county courts may incorporate towns; and effect of such incorporation.
2. Corporate power how vested. First alderman and council how appointed. Subsequent ones how elected.
3. *Aldermen and councilmen*, qualifications of, and term of service.
4. Oath of.
5. Aldermen and councilmen to choose their clerk, and their meetings how held.
6. Who shall preside at their meetings—how many shall constitute a quorum, and attendance, how compelled.
7. Power of town council over its members. To keep a journal, &c.
8. Powers of the alderman.
9. In case of absence of alderman, the member of council occupying his place, to have the same powers.
10. Powers of town council.
11. Restriction of, as to laws for fine and imprisonment.
12. Ordinances to be signed by the alderman.
13. Council to appoint officers, &c.
14. Powers of collectors so appointed.

SECTION
15. What notice to be given of sale of property for taxes.
16. Limit of taxation.
17. Statement to be published by alderman semiannually, of moneys received and expended.
18. Ordinances, how to be published.
19. Vacancies in office of alderman or council, how filled.
20. Fines, penalties and forfeitures, how recovered.
21. Council to regulate elections, and impose fines on persons refusing to accept.
22. Qualifications of voters.
23. In case of failure to elect alderman or member of council, special election to be ordered and held.
24. Town heretofore incorporated to continue, and be governed by this act.
25. Power of county court to disincorporate towns, in what cases.
26. What previous notice must be given.
27. Effect of such dissolution of corporation.
28. When dissolved, trustee to be appointed for corporation so dissolved.
29. Duty and powers of trustee.
30. Trustee to account, &c.

SEC. 1. Whenever two thirds of the taxable inhabitants of any town or village within this State, shall present a petition to the county court in the proper county, setting forth the metes and bounds of their town or village, and praying that they may be incorporated and a police established for their local government, and if the court shall be satisfied that two thirds of the taxable inhabitants of such town or village signed such petition and that the prayer of the petitioners is reasonable, the county court may declare such town or village incorporated, designating in the order declaring such town incorporated the metes and bounds thereof, and thenceforth the inhabitants within such bounds

shall be constituted a body politic and corporate by the name of "the alderman and town council of the town of (naming it)" and by that name they and their successors shall have perpetual succession, may sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity in all matters and actions whatsoever, and may grant, purchase, receive and hold property both real and personal, within the said town, and may lease, sell, and dispose of the same for the benefit of said town, and may do all other acts as natural persons, and may have a common seal, and the same break, alter and renew at pleasure.

SEC. 2. The corporate powers and duties of every town so incorporated, shall be vested in one alderman and five members of council. The first alderman and council shall be appointed by the county court, at the time of declaring such town incorporated, who shall continue in office till their successors are elected and qualified according to this act; and the alderman and members of council (except the first) shall be elected by the qualified electors residing in such town, on the first Monday of January in every year, in such manner as hereinafter provided.

SEC. 3. No person shall be an alderman, or a member of the council of any such town, who shall not have attained the age of twentyone years, who shall not be a free white male citizen of the United States, who shall not be an inhabitant of such town at the time of his election or appointment, and have resided therein for one whole year before his election, who shall not be a freeholder or householder, within the limits of such town; and every alderman and member of council (except the first) shall hold his office for the term of one year and until his successor shall be elected and qualified.

SEC. 4. Every alderman and member of the council shall take an oath to support the constitution of the United States and of this State, and faithfully demean himself in office.

SEC. 5. Such alderman and members of council shall within twenty days after their appointment or election, meet and choose a clerk of the council; and the alderman and town council shall constitute the legislative body of said town, and shall be denominated, when assembled, "the town council," and the sittings of said council shall be public, and such council shall, by ordinance, fix the time and places of holding their stated meetings, and the alderman shall have power to convene the council at any time.

SEC. 6. At all meetings of the council the alderman shall preside

and keep order, subject to such rules and regulations as may be established by ordinance; and in case of his absence, any member selected by the council for that purpose shall preside; any three members of the council shall constitute a quorum to do business, but a less number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as the council may previously by ordinance have prescribed.

SEC. 7. The town council shall judge of the qualifications, election, and return of their own members; they may determine rules for their own proceedings, punish any member or other person for disorderly behavior in their presence, and may expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and at the desire of any member, the yeas and nays shall be taken and entered in the journal on any question, resolution or ordinance.

SEC. 8. The alderman of any such town shall constitute the executive power thereof, and he shall be a conservator of the peace within such town, and shall have full power and authority to do, perform and execute all matters and things within the limits of such town which may be lawfully done by a justice of the peace in relation to criminal matters, and he shall be vested with full power and authority in all lawful cases of commitment to commit persons guilty of a breach of the peace to the common jail of the county, and shall have full power and authority to suppress all riots and unlawful assemblies, within the limits of said town. He shall have the custody of the seal of such town, and have the right of affixing the same; he shall execute the ordinances of said town, and see that they are obeyed; and he shall have power to assess all fines for the breach of any ordinance of said town, and issue execution for collecting the same, and shall commit to prison, whenever imprisonment is required by any ordinance of such town.

SEC. 9. In case of the absence of the alderman, any member of the council selected for that purpose, shall have full power and authority to do and perform all things by this act required to be performed by the alderman.

SEC. 10. The town council constituted as aforesaid, shall have full power and authority to pass all by-laws and ordinances to prevent, define and remove nuisances, to restrain and prohibit all gaming and disorderly houses, to establish patrols and restrain and prevent the meeting of slaves, to establish and regulate markets, to cause the streets and alleys in such town to be opened, cleared, repaired, paved, widen-

ed and extended by the inhabitants thereof, to cause new streets and alleys to be laid out and opened, to erect lamps and provide for the lighting of the same, to provide for the prevention and extinguishment of fires, to dig wells and erect pumps for the convenience of the inhabitants, to levy and collect taxes, to regulate the police of said town, to restrain all disorderly conduct and obscenity within the limits of such town, and generally to pass such by-laws and ordinances for the regulation of such town, as they may deem necessary, not contrary to the laws of the State.

SEC. 11. Such council shall not have power to pass ordinances requiring a longer imprisonment than six months and imposing a greater fine than fifty dollars.

SEC. 12. When any ordinance or by-law shall pass the council, the alderman shall sign the same, which ordinance shall then be in force.

SEC. 13. Such council shall have power to appoint an assessor, collector, constable, and such other officers and servants as may be necessary, remove them from office, prescribe their duties and fix their compensations.

SEC. 14. The persons appointed to collect taxes imposed by virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels, lands and tenements of the person chargeable therewith, in such manner as may be prescribed by ordinance.

SEC. 15. No sale shall be made of any property for taxes unless ten days' notice be given of the time and place of sale by advertisements set up in six of the most public places in such town.

SEC. 16. No tax shall be imposed by the council in any one year, on real and personal property in such town, at a higher rate than one fourth of one per centum on the assessment valuation of such property.

SEC. 17. The aldermen shall on the first Mondays of March and September in each year, make out a correct statement of all moneys received and expended on account of their respective towns during the six months next preceding, and shall cause copies of such statement to be set up at three of the most public places in such town, within five days thereafter, under such penalties as may be prescribed by ordinance.

SEC. 18. The clerk of the town council shall, within five days after the passage of any ordinance, cause copies of such ordinance to

be put up in three of the most public places in such town, for the information of the inhabitants.

SEC. 19. All vacancies in the office of alderman or member of council, shall be filled by special election, in such manner as may be prescribed by ordinance.

SEC. 20. All fines, penalties and forfeitures imposed by any ordinance, may be recovered in such manner as the council shall by ordinance direct.

SEC. 21. The town council shall by ordinance prescribe the mode and manner of holding, conducting and certifying all elections for officers in such town, and may by ordinance impose fines on any person who may be elected to office within said town, refusing to accept or act after being duly elected.

SEC. 22. All free white male persons over the age of twentyone years, residing within the limits of any incorporated town, who shall have resided in such town six months previous to any such election, shall be entitled to vote.

SEC. 23. In case of a failure of any election of alderman and members of council at the time fixed by this act for such elections, a majority of the members in council then in office, may cause the election to be held on a different day, and the officers elected at such election, shall possess the same powers as if they had been elected at the regular time.

SEC. 24. Towns heretofore incorporated, shall be continued as such, and shall, after the taking effect of this act, proceed in all things and be governed, according to its provisions.

SEC. 25. The county court of each county, shall have power to disincorporate any town which they may have incorporated, upon the petition of three fourths of the taxable inhabitants of such town.

SEC. 26. No corporation shall be dissolved under the provisions of this act, unless it shall appear to the satisfaction of the court, that notice has been given of the intended application for a dissolution of the incorporation, by advertisements set up in six of the most public places in such town, for at least four weeks before such application.

SEC. 27. No dissolution of any corporation under this act shall invalidate or affect any right, forfeiture or penalty accruing to such corporation, or invalidate or affect any contract, obligation or liability entered into or imposed upon such corporation.

SEC. 28. Whenever any corporation shall be dissolved by the

county court, such court shall appoint some competent person to act as trustee for the corporation so dissolved.

SEC. 29. It shall be the duty of such trustee, as soon as possible, to prosecute or defend to final judgment, all suits instituted by or against the corporation, to collect all moneys due the same, to liquidate all lawful demands against the same, and for that purpose, to sell any property belonging to said corporation, or so much thereof as may be necessary, and generally to do all acts requisite to bring to a speedy close all the affairs of the corporation.

SEC. 30. When the trustee shall have closed the affairs of the corporation, he shall pay over to the county court all moneys remaining in his hands, and deliver to the clerk all books, papers, records and deeds belonging to the dissolved corporation.

[Approved, December 7; in force, December 15, 1837.]

CHAPTER 152.

TOWNSHIPS.

SECTION
1. Power of county courts to erect, divide and alter.
2. Description of each township, place of holding elections, and every alteration, to be noted of record.
3. Record of establishment of any new township, to be transmitted to Secretary of State.
4. Such description to be furnished in all cases where it has not been done.
5. No township line to pass through any town.

SEC. 1. The county court of each county in this State, shall from time to time, as occasion may require, divide the county into convenient townships, subdivide those already established, and alter township lines.

SEC. 2. It shall be the duty of the clerk of the county court to enter on the minutes of said court a description of each township established by such court, containing the name and boundaries of such township and the place appointed for holding elections; and he shall also note in his minutes every alteration that may from time to time be made in any township line.

SEC. 3. Such clerk shall within thirty days after the establishing

of any new township, or altering any township line, transmit to the secretary of state a certified copy of the record made in such case.

SEC. 4. If any county in this State has not heretofore furnished the secretary of state with a description of the several townships in such county, it shall be the duty of the county court to direct the clerk of said court forthwith to furnish such description.

SEC. 5. No township line shall pass through any town in this State, but the whole of each town shall be included in one township.

[Approved : November 25, 1837.]

CHAPTER 153.

TRESPASSES.

SECTION

1. Upon trees, timber, &c., stone, ground, &c., grass, grain, &c., glass in any building, defined and penalty fixed.
2. By throwing down bars, &c. and penalty.
3. Penalties, how recovered.
4. Where defendant had probable cause to believe that the subject of trespass was his own, *single* damages only recovered.
5. If committed by a slave, action against master for single damages.
6. Otherwise, if committed by direction of his master.
7. If hired to any other person, such person accountable.
8. Statement in writing to be filed before justice of the peace.
9. General issue may be pleaded and special matter given in evidence, with notice thereof.

SEC. 1. If any person shall cut down, injure, destroy or carry away any tree placed or growing for use or shade, or any timber, rails or wood, standing, being or growing on the land of another person, or shall dig up, quarry or carry away any stone, ground, clay, turf, mould, fruits or plants, or shall cut down or carry away any grass, grain, corn, cotton, tobacco, hemp or flax, in which he hath no interest or right, standing or being on any land not his own, or shall wilfully break the glass or any part of it in any building not his own, every person so trespassing shall pay the party injured treble the value of the thing so damaged, broken, destroyed or carried away, with costs.

SEC. 2. If any person shall voluntarily throw down or open any doors, bars, gates or fence and leave the same down or open, other

than those that lead into his own inclosure, he shall pay the party injured the sum of five dollars for each offence, and double the amount of damages the parties may sustain by reason of such doors, bars, gates or fence being thrown open or down, with costs.

SEC. 3. All penalties contained in the two preceding sections, may be recovered by action of trespass or debt, founded on this act, before a justice of the peace, where the damages claimed do not exceed one hundred dollars, and in the circuit court if the damages claimed be over one hundred dollars.

SEC. 4. If on the trial of any action brought under the provisions of this act, it shall appear that the defendant had probable cause to believe that the land on which the trespass is alleged to have been committed, or that the thing so taken, carried away, injured or destroyed, was his own, the plaintiff in the action shall recover single damages only with costs.

SEC. 5. If a slave commit any of the trespasses mentioned in the two first sections of this act, the party injured may bring his action against the master or owner of such slave, for the recovery of single damages, under the same regulations and restrictions as herein before provided.

SEC. 6. If such slave shall have committed any of the trespasses mentioned in the two first sections of this act, under the direction of his master or owner, such master or owner shall be responsible in the same manner as if he had committed the trespass himself.

SEC. 7. If any such slave, at the time of committing any of such trespasses, shall be in the employ or hire of any person other than the owner of such slave, such person shall be accountable for all such trespasses committed while such slave may have been in his employ or hire, in the same manner that the owner is made accountable by this act for the trespasses of his slaves.

SEC. 8. In all actions brought under the provisions of this act, before a justice of the peace, the plaintiff shall file a statement in writing of his cause of action, before the justice issues his summons.

SEC. 9. In all actions founded on this act, the defendant may plead the general issue and give the special matter in evidence, giving the plaintiff notice in writing of the special matter he intends giving in evidence.

[Approved: December 6, 1837.]

CHAPTER 154.

VAGRANTS.

SECTION
1, 2. Who shall be deemed vagrants.
3. Justice of peace to issue warrant against, upon information, and to whom directed.
4. Jury to be empanelled, and disposition to be made of person by them found to be a vagrant.
5. If not hired out, to be committed to jail, and there how fed.
Power of person hiring vagrant.
6. If a minor, to be recognised to appear at county court, or committed to jail; and county court to bind him out.
7. Disposition to be made of money earned by vagrant.
8. Sheriffs and constables to give information of vagrants.
9. Grand juries to present them, and in such case court to order justice of peace to issue his warrant.
10. Judges of circuit court to give this act in charge to grand juries.

SEC. 1. Every able-bodied person who shall be found loitering or rambling about, not having any visible means of maintaining himself, and who doth not betake himself to labor, or some honest calling to procure a livelihood; and all able-bodied persons who are found begging and who quit their houses and leave their wives and children without the means of subsistence, shall be deemed and treated as vagrants.

SEC. 2. All keepers or exhibitors of any gaming table, bank or other gambling device, and all persons who travel or remain in steamboats, or go about from place to place, for the purpose of gaming, shall be deemed and treated as vagrants.

SEC. 3. Where any such person is found, any justice of the peace of the county, shall, upon information or from his own knowledge, issue his warrant to the sheriff or any constable of the county, to bring such person before him.

SEC. 4. If upon due examination it shall appear to such justice, that such person is a vagrant, as described in this act, and the fact being ascertained by a jury, (which shall in all cases be summoned and sworn to inquire whether the person be a vagrant or not,) he shall make out a warrant under his hand authorizing the sheriff or constable to keep such vagrant in his custody, until three days' notice be given by advertisement, set up in three of the most public places in the county, to hire out such vagrant at the court house door for the term of six months for cash in hand; and in case of a failure to hire out such vagrant, or if no person will take him only by furnishing him with his necessary

diet and clothing during his servitude, the said justice may, instead of directing such vagrant to be hired out as aforesaid, order him to be committed to the common jail of the county for any term not less than thirty, nor more than ninety days, one half of such time to be fed on bread and water alone.

SEC. 5. Any person hiring such vagrant, shall have and exercise the same power and control over him as masters are allowed by law over their indented apprentices and servants.

SEC. 6. If such vagrant be a minor, the justice shall commit him to jail, unless he enter into recognizance with good and sufficient security to appear at the next term of the county court; and on the appearance of such minor it shall be the duty of the county court to bind him apprentice to some useful trade or occupation until he arrive at the age of twentyone years and such vagrant minor shall in all respects be subject to the laws regulating apprentices.

SEC. 7. The money arising from the hire of any vagrant, shall be applied by the justice of the peace by whose order such vagrant may have been hired, after the payment of the costs, to the payment of his debts, if he owe any, and if he owe none, the balance shall be paid to such vagrant at the expiration of his term of service, unless he has a wife and children, or either, in which case it shall be applied to their use.

SEC. 8. All sheriffs and constables within their respective counties, shall give information to some justice of the peace of all vagrants that may from time to time come within their knowledge.

SEC. 9. The grand jury empanelled for any county, shall make presentment of all persons within the county whom they may suspect to be vagrants; and upon such presentment the circuit court shall direct some justice of the peace of the county to issue his warrant to bring such suspected person before him and proceed with him as in this act directed.

SEC. 10. The several judges of the circuit court in this State, shall give this act in charge to the grand jury at each term of their respective courts.

[Approved, November 30; in force, December 1, 1837.]

CHAPTER 155.

VENUE.

SECTION
1. Change of venue in civil suits, for what causes awarded.
2. Application may be made in vacation by petition and affidavit.
3. Notice to be given, and judge to award change of venue in vacation.
4. No party entitled to more than one change of venue in the same case.
5. Judge to transmit petition and affidavit to clerk of court where case pending.
6. May be made by consent.
7. Duty of clerk as to transmitting papers, &c.
8. To retain authenticated copy of the same.
9. Duty of clerk of court to which the cause is certified.
10. Costs of, by whom paid.
11. If not paid within fifteen days, how collected.
12. Failure to transmit, or loss of papers, not to work discontinuance.

SEC. 1. A change of venue may be awarded in any civil suit pending in any of the courts of this State for the following causes: First, that the inhabitants of the county are so prejudiced against the applicant that he cannot expect an impartial trial; second, that the opposite party has an undue influence over the minds of the inhabitants of the county.

SEC. 2. Any party to a suit, may present to the court or the judge thereof in vacation, a petition setting forth the cause of his application for a change of venue, to which shall be appended the affidavit of the applicant, verifying the truth of the facts set forth in the petition, and alleging that he has just reason to believe that he cannot receive a fair and impartial trial, on account of the causes set forth in his petition.

SEC. 3. If reasonable notice shall have been given to the adverse party or his attorney, of the time and place of such intended application for a change of venue, the court or judge thereof in vacation shall hear the case, and if the application is in accordance with the provisions of this act, a change of venue shall be awarded to some other county in the same circuit, where the causes complained of do not exist, as convenient as may be to the opposite party.

SEC. 4. No party to a suit shall be entitled to more than one change of venue in the same cause.

SEC. 5. If a change of venue shall be awarded by a judge in vacation, he shall immediately transmit to the clerk of the court where the

cause is pending, the petition and affidavit with an order for a change of venue endorsed thereon.

SEC. 6. If the parties, their agents or attorneys, consent to a change of venue, the court shall make an order for such change as in other cases.

SEC. 7. When any such order shall be made by the court, or judge thereof in vacation, the clerk of such court shall immediately make out and transmit to the proper court, a copy of the order, petition and affidavit, and a full transcript of the record and proceedings in such cause, with all the original papers filed therein and composing a part of the record.

SEC. 8. It shall be the duty of the clerk, to make out and file in his office, an authenticated copy of all the original papers filed in such cause, prior to transmitting such papers to the county to which the venue may have been changed.

SEC. 9. The clerk of the court to which such cause may have been certified, shall file in his office all the papers in the cause transmitted to him, and the cause shall be docketed, proceeded in, and determined as if it had originated in such court.

SEC. 10. All the costs attending any change of venue, including the expenses of the copy of the original papers required by this act to be filed in the office of the clerk making the same, shall be paid by the petitioner.

SEC. 11. If such petitioner fail to pay such costs within fifteen days after the change of venue, the clerk may make out a fee bill against him and his security for costs (if any), and deliver the same to the sheriff, who shall levy and collect the same, together with fifty per centum thereon, for the use of such clerk, as other fee bills.

SEC. 12. If any clerk shall fail to transmit the transcript and papers in any cause, the change of venue of which has been awarded, or if such papers shall have been sent and lost, such failure or loss shall not operate as a discontinuance of such suit, but such transcript and papers may be filed at the next term of such court, or if such papers shall have been lost, copies thereof may be filed, and such cause shall proceed as if no failure or loss had happened.

[Approved: December 13, 1837.]

CHAPTER 156.

WEIGHTS AND MEASURES.

SECTION
1. Clerk of county court to provide, and what.
2. Contents of bushel.
3. Notice to be given by clerk, and penalty of any person using wrong weights or measures thereafter.
4. Clerk to seal weights and measures.
5. Constable to be inspector of, and his duty.

SEC. 1. The clerk of the county court, in each county of this State, shall, as soon as practicable, provide, at the expense of the county, one measure of one foot, or twelve inches, English measure; one measure of three feet, or thirtysix inches, English measure, denominated a yard; one half-bushel measure, which shall contain one thousand and seventyfive and one fifth cubic inches, denominated dry measure; one gallon measure, which shall contain two hundred and thirtyone cubic inches; one half-gallon measure, which shall contain one hundred and fifteen and a half cubic inches; one quart measure, which shall contain fiftyseven and three fourths cubic inches; one pint measure, which shall contain twentyeight and seven eighths cubic inches; the four preceding measures to be denominated liquid or wine measure. He shall also procure one set of weights, called avoirdupois weights, made of iron or brass; and one seal with the initials of the county; which weights, measures, and seal, shall be safely and securely kept by said clerk.

SEC. 2. Every bushel shall contain thirtytwo quarts, dry measure, or thirtyeight and twentythree one-hundredths quarts, liquid or wine measure.

SEC. 3. As soon as the clerk shall have procured such weights and measures, it shall be his duty to cause notice thereof to be given, by written advertisements, put up at the court house door, for the space of two months; and if, after the expiration of the said two months, any person shall knowingly keep any measures or weights, and buy and sell any commodity whatsoever, by such weights or measures, as do not correspond with the weights and measures deposited in the clerk's office, such person shall, for every such offence, forfeit and pay the sum of ten dollars, for the use of the county where such

offence may have been committed, with costs of suit, to be recovered before any justice of the peace in such county, in the name of the county.

SEC. 4. The several clerks of the county court shall, with the seal required by this act to be provided, seal all weights and measures that may be presented to them for that purpose, which correspond with the county standard.

SEC. 5. It shall be the duty of every constable, in his township, to inspect, from time to time, the weights and measures used by millers, merchants, pedlers, grocers, and other dealers in buying and selling commodities by weight or measure, and report to some justice of the peace all violations of this act which may come to his knowledge.

[Approved: February 12, 1838.]

CHAPTER 157.

WILLS AND TESTAMENTS.

SECTION

1. Who may devise generally by will.
2. Who may devise goods and chattels.
3. In what cases feme covert may devise by will.
4. How executed and attested.
5. How witnessed by person who signed for the testator.

REVOCATION.

6. How revoked or altered.
7. Testator subsequently marrying and having issue, will held to be revoked, and exceptions.
8. Will of feme sole revoked by marriage.
9. Effect of bond to convey, or conveyance of any property previously devised or bequeathed—and remedy thereon.
10. Effect of charge or incumbrance for securing payment of money, on property previously devised.
11. Portion of child born after will executed, and left unprovided for.

SECTION

12. Child, or legal representatives of child omitted in will, how provided for.
13. Judgment for portion of such child, on *sci. fa.*
14. Legacy or devise to child or other descendant, not to lapse by death of legatee or devisee, leaving descendant, in life time of testator.
15. Second will destroyed, revoked, &c. not to revive first, unless such intention appear by terms of revocation.

PROBATE.

16. By whom taken.
17. Where.
18. Proof heard, and certificate given.
19. In what cases depositions to be taken, and commission, to whom and how issued.
20. Effect of testimony so taken.
21, 22. When evidence of handwriting of testator and witnesses admissible.

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SEC. 1. Every person of twentyone years of age and upwards, of sound mind, may, by last will and testament, devise all his estate real and personal and all interest therein.

SEC. 2. Every person over the age of eighteen years, of sound mind, may by last will and testament, dispose of goods and chattels.

SEC. 3. No married woman shall be capable of making a will, unless she have power by marriage settlement to do so, or authority in writing by her husband before marriage.

SEC. 4. Every last will and testament of real or personal property or both, shall be executed and attested in the following manner: First, it must be subscribed by the testator at the end of the will, or by some person for him at his request; second, such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him to have been so made to each of the attesting witnesses; third, the testator at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed to be his will and testament; fourth, there shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator; fifth, where the entire body of the will and the signature thereto, shall be written in the proper handwriting of the testator or testatrix, such will may be established by the unimpeachable evidence, of at least three disinterested witnesses to the handwriting and signature of each testator or testatrix, notwithstanding there may be no attesting witnesses to such will; but no will without such subscribing witnesses shall be pleaded in bar of a will subscribed in due form, as prescribed in this act.

SEC. 5. Every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to such will, and state that he signed the testator's name at his request.

SEC. 6. No will in writing except in the cases hereinafter mentioned, nor any part thereof, shall be revoked or altered otherwise than by some other will in writing or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, cancelled, obliterated or destroyed, with the intent, and for the purpose of revoking the same, by the testator himself, or by some other person in his presence, by his direction and consent, and when so done by another person, the direction and consent of the testator or the fact of such destruction shall be proved by at least two witnesses.

SEC. 7. If after making any will disposing of the whole estate of the testator, such testator shall marry and have issue by such marriage, born either in his life time or after his death, and the wife or the issue of such marriage shall be living at the death of the testator, such will shall be deemed revoked, unless provisions shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

SEC. 8. A will executed by an unmarried woman shall be deemed revoked by her subsequent marriage.

SEC. 9. A bond, agreement or covenant made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will and testament previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity, but such property shall pass by the devise or bequest, subject to the same remedies, on such bond, agreement or covenant for the specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to them.

SEC. 10. A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate previously executed, but the devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

SEC. 11. Whenever a testator shall have a child born after the making of his will, either in his life time or after death, and shall die, leaving such child, so after born, unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, every such child shall succeed to the same portion of his father's estate real and personal as would have descended or been distributed to such child if the father had died intestate, and shall be entitled to recover the same portion from the devisees and legatees in proportion to, and out of the parts devised or bequeathed to them by such will.

SEC. 12. When any person shall make his last will and testament, and omit to mention the name of a child, if living, or the legal representatives of such child born and living at the time of the execution of such will, every such person, so far as regards such child, shall be deemed to have died intestate, and such child shall be entitled to such proportion, share and dividend of the estate real and personal of the testator, as if he had died intestate, and such child shall be entitled to recover from the devisees and legatees in proportion to the amount of their respective shares, and the court of probate shall have power to decree a distribution of such estate according to the provisions of this and the preceding sections.

SEC. 13. If the devisees or legatees refuse to pay the same, the party for the recovery thereof shall have a writ of scire facias against

them, and on the return of the same, the court shall enter judgment against such devisees or legatees and award execution thereon.

SEC. 14. Whenever any estate real or personal shall be devised or bequeathed to a child or other descendant of the testator, and such legatee or devisee shall die in the life time of the testator, leaving a child or other descendant who shall survive such testator, such legacy or devise shall not lapse, but the property so devised or bequeathed, shall vest in the surviving child or other descendant of such devisee or legatee, as if such devisee or legatee had survived the testator and died intestate.

SEC. 15. If after making any will, the testator shall duly make and execute a second will, the destruction, cancelling or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to his first will, or unless he shall duly republish his first will.

SEC. 16. The court of probate or the clerk thereof in vacation, subject to the rejection of the court, shall have power to take the probate of wills.

SEC. 17. If the testator have any known place of residence in this State, his will shall be proved in the county in which he resided; if he have no known place of residence, and lands be devised, it shall be proved in the county in which the lands lie, and if he have no known place of residence and there be no land devised, it shall be proven in the county in which the testator died; and if he died out of this State, then in any county.

SEC. 18. When any will shall be exhibited for probate, the court of probate or the clerk thereof in vacation may immediately receive proof thereof, and grant a certificate of probate, or if such will be rejected shall grant a certificate of such rejection.

SEC. 19. If any witness shall be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the State or more than sixty miles from the place where the will is to be proven, such court or clerk shall issue a commission annexed to such will, and directed to any judge or justice of the peace, or any other person authorized to take depositions, empowering him to take and certify the attestation of such witness.

SEC. 20. If such witness appear before such officer and make oath that the testator signed the writing annexed to the commission as his last will and testament, or that some other person signed it by his direction, that he was of sound mind, that the witness subscribed his

name thereto in the presence of such testator and at his request, the testimony so taken shall have the same force and effect, as if taken before the court or clerk.

SEC. 21. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the handwritings of the testator, and of the witnesses dead, insane, or absent, and of such other circumstances as would be sufficient to prove such will on a trial at common law.

SEC. 22. If it shall appear to the satisfaction of the court or clerk, that all the subscribing witnesses to the will are dead, insane or absent, the court or clerk shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will in a trial at law.

SEC. 23. All the testimony adduced in the support of any will, shall be reduced to writing and shall be signed by the witnesses, and certified by the clerk.

SEC. 24. No nuncupative will shall be good, where the estate bequeathed exceeds the value of five hundred dollars, nor unless it be proved by at least two witnesses who were present at the making thereof; nor unless it be proved that the testator at the time of pronouncing the same, called on some persons present, to bear witness that such was his will, or to that effect, nor unless such nuncupative will was made at the time of his last sickness and at the dwelling of the deceased, or where he had resided for the space of ten days or more, except when the deceased may have been taken sick from home and died before his return.

SEC. 25. All mariners at sea or soldiers in the military service may dispose of their wages and other personal property as at common law.

SEC. 26. No proof of any nuncupative will shall be received, unless it be offered for probate within six months after the speaking of the testamentary words, nor unless the words or the substance thereof were reduced to writing and signed by witnesses within fifteen days after they were spoken.

SEC. 27. No probate of any nuncupative will shall be made for twenty days after the death of the testator, nor shall any nuncupative will be at any time proved unless the substance thereof be committed to writing, and a citation be issued, accompanied with a copy of such

will, and served on the widow and next of kin of the deceased, if any, that they may appear at a time in such citation specified, and contest the probate of such will, if they think proper.

SEC. 28. All last wills and testaments when proven in accordance with the provisions of this act, together with the proofs and examinations, shall be recorded by the clerk of the court of probate, and the originals shall be carefully filed in his office.

SEC. 29. Every will so proved, recorded and signed by the clerk of the court of probate, and attested by his seal of office, may be read as evidence without any further proof thereof.

SEC. 30. The record of any such will, made, proved and recorded as aforesaid, and the exemplification of such record by the clerk of the court of probate in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proved, and may in like manner be repelled by contrary proof.

SEC. 31. In all cases where lands devised by last will and testament, are situate in different counties, a copy of such will shall be recorded in each county.

SEC. 32. If any person interested in the probate of any will, shall appear within five years after the probate or rejection thereof, and by petition to the circuit court of the county in which such will was established or rejected, pray to have any such will rejected, if previously established, or proven, if previously rejected, by the court of probate, it shall be the duty of the circuit court to direct an issue to try the validity of such will, which issue shall in all cases be tried by a jury.

SEC. 33. The verdict of a jury shall be final, saving to the court the right of granting a new trial as in other cases, and to either party, the right of an appeal or writ of error to the supreme court.

SEC. 34. If no person shall appear within the time aforesaid, to contest the validity of any such will, the probate or rejection thereof shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period after their respective disabilities are removed.

SEC. 35. In all trials respecting the validity of any will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, shall be admitted in evidence and have such weight as the jury may think it deserves.

SEC. 36. Citizens of any of the United States, or the Territories thereof, owning real or personal property in this State, may devise and

bequeath the same by last will and testament, executed and proved according to the laws of this State, or any State or Territory in which the will may be made.

SEC. 37. Copies of such wills shall be recorded in the same manner as wills executed and proven in this State, and shall be admitted in evidence in the same manner.

SEC. 38. Any such will may be contested and annulled within the same period and in the same manner as wills proven in this State.

SEC. 39. If any person shall be a subscribing witness to the execution of any will wherein any beneficial devise, legacy, interest or appointment of real or personal estate shall be made to such witness, and such will cannot be proved without the testimony of such witness, such devise, legacy, interest or appointment shall be void, so far only, as concerns such witness or any person claiming under him, and such person shall be a competent witness, and may be compelled to testify respecting the execution of such will, in like manner as if no devise or bequest had been made to him.

SEC. 40. If such witness would be entitled to any share of the testator's estate, in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness, shall be saved to him as will not exceed the value of the devise or bequest made to him in the will, and he may recover the same from the devisees or legatees named in the will, in proportion to and out of the parts devised and bequeathed to them.

SEC. 41. If such will be attested by a sufficient number of other witnesses competent to prove such will as required by this act, then such devise, legacy or appointment shall be valid.

SEC. 42. If by any will any real estate be charged with any debt, and a creditor whose debt is so charged hath attested the execution of such will, such creditor shall be admitted as a witness to the execution of such will.

SEC. 43. If any person hath attested or shall attest the execution of any will to whom any legacy or bequest is thereby given, and such person before giving testimony concerning the execution of such will, shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest, upon tender thereof; such person shall be admitted as a witness to the execution of such will, and the credit of such witness shall be subject to the consideration of the court and jury.

SEC. 44. If any legatee who has attested or shall attest the execu-

tion of any will, shall have died or die in the life time of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, or tender made thereof, such legatee shall be deemed a legal witness to the execution of such will.

SEC. 45. No person to whom any estate, interest, gift or appointment shall be given or made, which is by this act declared to be void, or who shall have refused to receive any such legacy, or bequest, or tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he has been examined, demand or receive any profit or benefit, from any such estate, interest, gift or appointment, so given or made to him by such will; or demand, receive or accept from any person any such legacy or bequest or any satisfaction or compensation therefor.

SEC. 46. When any testator in his last will shall give any chattels or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other devisees, legatees and heirs shall refund their proportional parts of such loss to such person from whom the bequest may have been taken.

SEC. 47. When any devisee, legatee, or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the court of probate shall upon the petition of the party interested in such contribution, and due notice being given to the devisee, legatee, heirs, executors or administrator, order a contribution and distribution of such estate, according to equity, and enforce such order with like effect as decrees of courts of equity.

SEC. 48. Whenever any will shall be lost, or destroyed by accident or design, the court of chancery shall have the same power to take proof of the execution of such will, and to establish the same, as in the case of lost deeds.

SEC. 49. Upon such will being established by the decree of a competent court, such decree shall be recorded by the clerk of the court of probate, before which the will might have been proven, if it had not been lost or destroyed; and letters testamentary, or of administration with the will annexed, shall be issued thereon by such clerk in the same manner as upon a will duly proven before him.

SEC. 50. If before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on

the estate of the testator, the court to which such application shall be made shall have authority to restrain the administrator so appointed, from any act or proceedings which would be injurious to the legatees or devisees claiming under such lost or destroyed will.

SEC. 51. No will of any testator shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the life time of the testator, nor unless its provisions be clearly and distinctly proved by at least two witnesses, a correct copy or draft being deemed equivalent to one witness.

SEC. 52. The provisions of this act in relation to proof and the probate of wills, and the jurisdiction of the court of probate and the clerk thereof, and the proceedings thereon, shall apply as well to wills made previous, as those subsequent to the time when this act will take effect.

SEC. 53. The provisions of this act in relation to the revocation of wills, shall apply to all wills made by any testator who may be living at the taking effect of this act.

SEC. 54. The provisions of this act shall not be construed to impair the validity of the execution of any will heretofore made and proven, or to affect the construction of any such will.

SEC. 55. The term "will," as used in this act, shall be so construed as to include all codicils as well as wills.

SEC. 56. If the court of probate or the clerk thereof in vacation, shall be informed that any person hath in his possession the will of any testator and refuses to produce the same for probate, such court or clerk shall have power to summon such person, and by proper process to compel him to produce the same.

[Approved: March 3, 1838.]

CHAPTER 158.

WITNESSES.

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24. Person denying being of God, not to testify.
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SEC. 1. In all cases where witnesses are required to attend in any cause, civil or criminal, in any court of record of this State, a subpœna shall be issued by the clerk of the court wherein such cause is pending, or by arbitrators, or any person acting under the authority of such court, to take the deposition or testimony of such witness, required to attend before them, at the request of either party interested.

SEC. 2. Such subpœna shall express the day and the place where such witnesses are to appear, and it may be served by any officer authorized to serve process, or by any free white person over the age of twentyone years, who would be a competent witness in the cause, and may be issued to any county in the State.

SEC. 3. Such subpœna shall contain the names of all witnesses for whom a subpœna is required by the same party, in the same cause, who reside in one county.

SEC. 4. Every person summoned as a witness in any cause pend-

ing in any court of record, or before arbitrators, or other persons appointed under the authority of the court, to take his deposition or testimony, and failing to attend, may be compelled to attend by attachment.

SEC. 5. Such attachment may be served in any county in this State.

SEC. 6. Every person summoned as a witness, and attending, who shall refuse to give evidence, which may lawfully be required to be given by such person on oath, may be committed to prison by the court or other person authorized to take his deposition or testimony, there to remain until he give evidence as required.

SEC. 7. The court shall have power to impose a fine not exceeding one hundred dollars on every person summoned as a witness, who shall not appear and testify.

SEC. 8. Such fine may be remitted for good cause shown, at the term at which it was imposed or the next term thereafter.

SEC. 9. When the party causing any witness to be summoned, shall have paid or tendered to such witness his legal fees for travel and one day's attendance, at the time of summoning him, such delinquent witness shall be liable to such party for all damages sustained by reason of his non-attendance, in an action on the case, unless he show sufficient cause to justify such absence.

SEC. 10. All witnesses shall be privileged from arrest in all cases except treason, felony, or breach of the peace, during their attendance on any court, and where their attendance is required by subpœna; and going to and returning from the place where they may be required to appear to testify, allowing one day for every twentyfive miles, from their residence.

SEC. 11. If any person who shall cause a witness to be arrested, knowing him to be in attendance as such, upon a subpœna, his suit shall be abated, and he shall be fined at the discretion of the court from which the subpœna issued, in any sum not exceeding one hundred dollars.

SEC. 12. Justices of the peace shall have power to issue subpœnas for witnesses in any case cognizable before the circuit court or arbitrators.

SEC. 13. Subpœnas for witnesses shall be directed to the persons to be summoned, and may be served by reading the same or delivering a copy thereof to the person to be summoned, and if served by an officer, his return shall be conclusive of the facts therein stated, and if

served by any other person, the return shall be verified by affidavit, which shall be received in evidence of the facts therein contained.

SEC. 14. When any cause shall be continued on account of the absence of a witness duly summoned, and the party for whom such witness was summoned shall make affidavit, stating that such absent witness is material, and that he cannot safely go to trial without his testimony, the court may award a writ directed to the sheriff of the proper county, commanding him to take the body of such witness, that he appear and testify in the cause at the next term thereafter; and the clerk shall issue such writ accordingly and state therein the day on which the cause shall be set for trial, as the day of appearance.

SEC. 15. When any writ authorized by the preceding section, or any attachment for a witness shall be executed, the sheriff shall discharge such witness, on his entering into recognizance, which such officer is authorized to take, in any sum not less than one hundred, nor more than five thousand dollars, conditioned for his appearance and due attendance, according to the writ.

SEC. 16. Every court of record and every judge of the supreme and circuit courts, shall have power upon the application of any party to a suit, or other proceeding civil or criminal pending in any court of record, or before any justice of the peace, to issue a writ of habeas corpus for the purpose of bringing before such court or justice any person who may be detained in prison within this State for any crime, except where such person may be imprisoned under a sentence, which renders him incompetent to testify in any case, to be examined as a witness in such suit or proceeding on behalf of the party applying for such writ.

SEC. 17. Every application for a writ of habeas corpus to testify, shall be verified by affidavit, and shall state the title and nature of the proceedings in which the testimony of the prisoner is desired, the court or officer before whom pending, and that the testimony of such witness is material and necessary to the applicant on the trial or hearing of such suit, as he is advised by counsel and verily believes.

SEC. 18. If the application for such writ be made by the attorney for the State in a cause in which the State is a party, such attorney shall not be required to make affidavit to his application; his official statement in writing is all that shall be required of him.

SEC. 19. Every prisoner who shall be brought before any court, grand jury or justice of the peace, upon any writ of habeas corpus, to

testify, shall be remanded, after having testified, to the prison from whence he was taken.

SEC. 20. No competent witness in any cause, shall be excused from answering a question relevant to the matter in issue, on the ground merely that the answer to such question may establish or tend to establish, that such witness owes a debt, or is otherwise subject to a civil suit.

SEC. 21. No minister of the gospel or priest of any denomination shall be compelled to testify in relation to any confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

SEC. 22. No person authorized to practise physic or surgery, shall be compelled to disclose any information which he may have acquired from his patient while attending him in a professional character, and which information was necessary to enable him to prescribe as a physician, or do any act for him as a surgeon.

SEC. 23. No attorney or counsellor at law shall be required or allowed to testify in relation to facts communicated to him by his client in his professional character.

SEC. 24. No person who denies the being of a God, shall be allowed his oath in any court.

SEC. 25. No negro or mulatto, bond or free, shall be a competent witness in any case, except in cases in which all the parties are negroes or mulattoes, or in which the State is plaintiff, and a negro or mulatto or negroes or mulattoes are defendants.

[Approved: February 20, 1838.]

CHAPTER 159.

WRITS AND PROCESS.

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7. On what affidavit process may be served on such days.
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9. Party dying, clerk may issue proper writs and process to bring in representatives.

SEC. 1. All writs and process issued out of any court of record in this State, shall run in the name of "*the State of Arkansas*," and shall be tested by the clerk of the court from which the same may be issued.

SEC. 2. All such writs shall be sealed with the judicial seal of such court.

SEC. 3. All writs and process issued by any judge or justice of the peace, or other officer, authorized to issue the same, shall run in the name of "*the State of Arkansas*," and be signed by the officer issuing the same.

SEC. 4. In all cases where any person shall apply for an original writ, or other process for commencing an action in a court of record, the legal fee for issuing and all taxes thereon shall be paid to the clerk before he issues such writ or process.

SEC. 5. No person shall on Sunday or on the fourth day of July, serve or execute any writ or process, warrant or order, except in criminal cases, for breach of the peace, or where the defendant is about to leave the country.

SEC. 6. The service of every writ, process, warrant or order on said days shall be void, and the person serving or executing the same, shall be as liable to the suit of the party aggrieved as if he had done the same without any writ, process, warrant or order.

SEC. 7. If the plaintiff in any writ, process, warrant or order, in any civil suit, or some other person for him, shall make and deliver to the officer charged with the execution of such writ, process, warrant or order, an affidavit that such defendant is about to leave the country, such officer may serve and execute every such writ, process, warrant or order on a Sunday or on the fourth day of July.

SEC. 8. When any writ or other process issued out of any court of this State, shall not be executed, the clerk of such court, on the application of the party suing out the same, shall issue an *alias*, *pluries*, or other proper process without an order of the court for that purpose.

SEC. 9. If any party to a suit, pending in any of the courts of this State, shall die, the clerk of such court may, on the application of the other party, issue proper writs and process to bring in the representatives of such deceased party.

[Approved: November 25, 1837.]

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